



ES<sup>69</sup>



# **MARRIAGE A LA MODE**



# MARRIAGE A LA MODE

*A Surrogate's Tales of Strange  
Wedding Dramas.*

by ARTHUR S. MAY

*Barrister-at-Law, Surrogate in  
Doctors' Commons*

“ We will have rings and things and  
fine array,  
And—kiss me, Kate, we will  
be married o’ Sunday ”  
*Taming of the Shrew.—Act II. Sc. i.*

JOHN CASTLE  
  
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## PREFACE

IT MAY be safely asserted that in Doctors' Commons, where my experience extends over a number of years, some of which were years of war, I have had to do with more marriages than anyone ever had before or will again. It is only natural that I should be interested in matters relating to matrimony, and some of the things which have an interest for me form the subject-matter of this book—the stories are my illustrations. I have tried to avoid the topics which an ordinary reader would not care about unless he was thinking of getting married himself, as I have already published a practical handbook intended for the use of those who contemplate matrimony or have to advise others upon it.\*

Everything about marriage, and above all, romantic marriage, will continue to fascinate until kissing goes out of fashion. The stories in these pages possess the characteristic of owing nothing to art or imagination. They are true, and no attempt has been made to alter or add to the facts, or to supply any emotional colour or background. If some of them are merry and some of them are sad, it is their own quality which makes them so : they owe nothing to me, who am as incapable of

\* *Marriage in Church, Chapel and Register Office.* (Longmans, Green & Co. 1920.)

fiction as George Washington. Had I altered them one jot, they would have lost all their value. They are still essentially in the rough state in which they were found in law reports and the like, but they afford glimpses of persons and things out of the common. It would be wrong to accept them as typical of society at any time, even in the eighteenth century : everyday life does not parade in public, and no courthouse dial records the sunny hours. These stories owe their preservation to the very fact that they were considered singular or sensational when they happened. To-day, most of them have been forgotten.

If any of my readers can supply me with further information upon any of them, I shall consider it a kindness.

ARTHUR S. MAY

6, *Fig Tree Court Temple, E.C. 4*

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I

THE FLEET PARSONS



## I

## THE FLEET PARSONS

"ON TUESDAY one Oates, a player for a clerk to the weddings at the Bull and Garter by the Fleet Gate, was bound over to appear at the next sessions for hiring John Fennell, a poor boy (for half-a-guinea) that sells fruit on Fleet Bridge, to personate one John Todd and marry a woman in his name ; which he accordingly did ; and the better to accomplish this piece of villainy, the said Oates provided a blind parson for that purpose." Thus runs the record in a news-sheet of September, 1733, and it is no unfair sample of what used to go on in the neighbourhood of Ludgate Hill, right under the noses of the ecclesiastical courts which abounded in Doctors' Commons some hundred yards or so away. What was the purpose of this particular personation we do not know, but a number of similar cases\* appear in the hundred-and-twenty registers of Fleet marriages which are still in existence, some of them substantial volumes, others mere pocket-books, weighing in bulk more than half a ton.

\* Thus we read that the Widow Hussey, a Quakeress, married John Rogers, gentleman. Her scruples did not permit her to attend an ecclesiastical ceremony, but she craved the respectability of a Fleet marriage-certificate. The parson records with glee that she did not mind engaging Beck Mitchell to represent her.

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It was the sort of thing which came in very handy for blackmailing operations upon the living, and a standing temptation to the housekeepers to single gentlemen to build up a claim to the property on the death of their employers. The reverend joiner was invariably blind to the intention of the parties ; if he noticed anything wrong, it was when the ceremony was over and the fee in his pocket.

The Liberty of the Fleet, in which this marriage business was the staple of trade, lay between Ludgate Hill, the Old Bailey, Fleet Lane, and the Fleet Ditch, and every other house in it had its particular tout and hung out the sign, "Marriages Performed Here." Persons committed to the Fleet Prison for debt were permitted to live in this area upon certain conditions so long as they could pay the fees for the privilege.

The Fleet Parson typifies the degradation of eighteenth century society. The proper way to marry in those days was by banns or by licence, and during canonical hours ; but any marriage performed by a priest was undoubtedly valid, and the rules were constantly disregarded. We may read in the State Trials how Beau Fielding sent for a Spanish priest and married in his bedroom a woman of bad reputation, under the impression that she was a rich widow whose husband's will he had seen in Doctors' Commons. He consoled himself for the fraud by marrying the Duchess of Cleveland, but the notorious duchess turned venomous and procured his conviction for the bigamy. In an age which habitually contracted matrimony without any regard to the directions for

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celebration prescribed by authority, the Fleet Parson was not the man to trouble himself about unnecessary details.

Marriage in the orthodox way was a very expensive thing, for the attendant festivities lasted for several days and cost more than a funeral ; so a quiet ceremony down by the Fleet when the day's work was over was practical economy. The clocks there never went in the afternoon. The clergyman was liable to a hundred pounds fine each time he officiated, but he was in the Fleet already, and fine and excommunication meant nothing to him. Unhappily, it was not merely motives of economy that brought him the business, for, being free of the law, anything was fish for his net. Abductions and elopements came as a matter of course ; no questions were asked, sometimes not even the names of the parties ; and if the wedding was to be antedated or if a certificate was required of one which never took place, he was ready to oblige for a consideration. He could also divorce the people he had married by simply tearing the page out of his book.

William Dare was one of the most successful of these practitioners ; he had a curate and married from one hundred and fifty to two hundred couples in a month. His evidence on the trial at the Old Bailey of Peter de St. Remy for bigamy gives a good idea of the character of the man and the way he carried on his business. "I am a clergyman of the Church of England," he said. "I remember the gentleman very well ; I married him the 7th of March, 1740, in the evening, after it was

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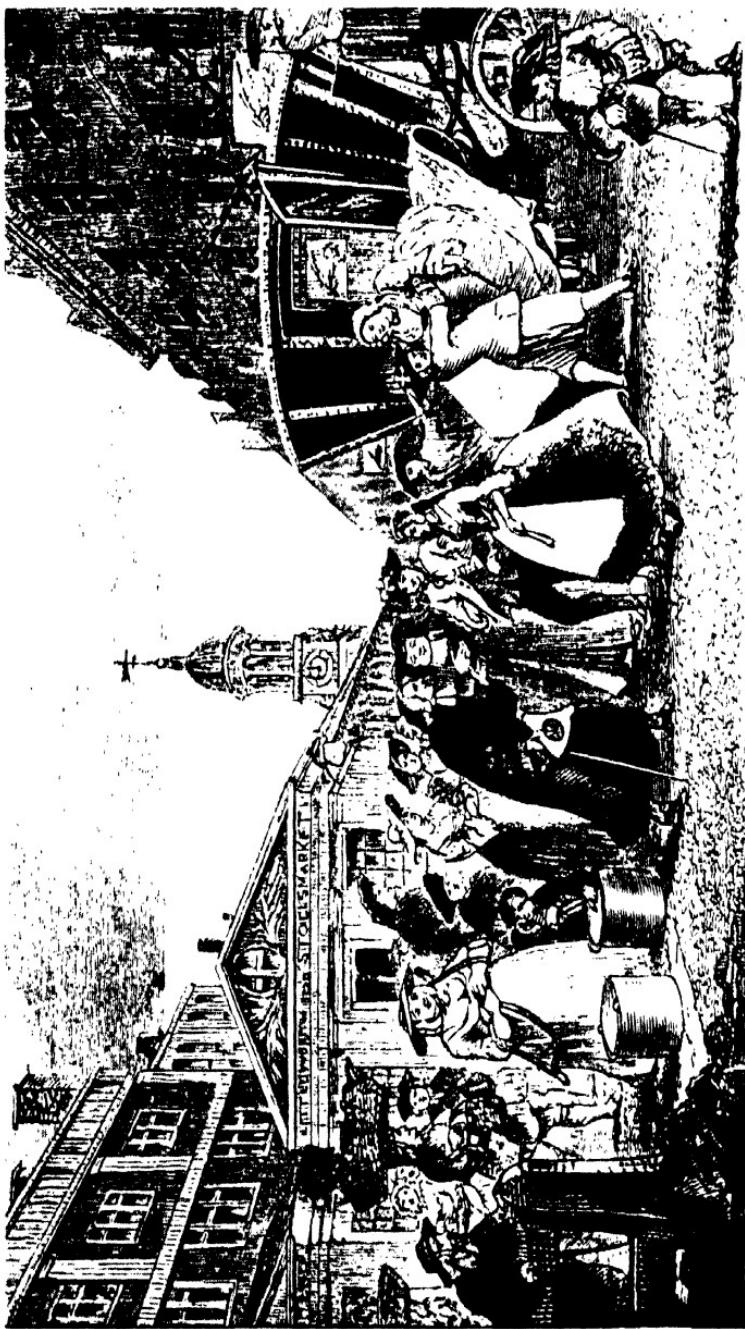
dark, by candlelight, at the house of Mrs. Crook in the Fleet Market. This is the entry I then made of it in this book. The woman told me her name was Ann Hatfield, and bid me set her down spinster. I agreed with them for thirteen and sixpence, which was laid down upon the book with the ring. They were married according to the form of prayer and ceremonies of the Church of England. I took the gentleman's hand and joined it to the woman's ; whether he thought the ceremony was over or no I can't say, but he went to salute her, and I said, ' Pray don't be in a hurry, have a little patience, and then you may do as you please.' She was given away by a gentleman I don't know. After the ceremony was over he gave the gentlewoman of the house a shilling for officiating as clerk ; I said it was usual to give something more ; he frowned, which made the creases on his forehead appear more than ordinary, and I took particular notice of him. I observed his nose was remarkable. My Lord, there is something more corroborating ; a gentleman came to me some little time afterwards to know whether I had married one Mrs. Ann Hatfield to one Mr. Remye ; he said with an oath (your Lordship will excuse me), ' I am glad of it, for I did not think anybody would have had her, she is so d—n'd ugly ' ; and he said he was glad for other reasons. He called her his sister-in-law and desired a stamped certificate. I gave him a certificate with a five-shilling stamp, and he gave me half-a-guinea for my trouble, and paid the stamp beside." Counsel interrupted him :—" Then she was not a tempting piece ? "



(Facing page 17)

*A Fleet Marriage Party*  
*(See Chapter I)*

(From a print of the period)



Dare proceeded : " She would not have tempted me. Another thing I thought being odd ; he came in a plain hat, and as soon as the ceremony was over, the gentle-woman pulled a lace hat out of a handkerchief and he put it on."

Dr. Gaynam, whose stately portliness earned him among his boon companions the dignity of " Bishop of Hell," gave his evidence on a similar occasion with ease and assurance. " The 9th of September, 1733, I married a couple at the Rainbow coffee house, corner of Fleet Ditch. I entered the marriage in my register, as fair a register as any church in England can produce. I shewed it last night to the foreman of the jury and my Lord Mayor's clerk at the London Punch House.' The prosecution tried to get at him :—" Are you not ashamed to own a clandestine marriage in a court of justice ? " Gayman bowed low and gave them a tag of Horace—*" Video meliora proboque, deteriora sequor"*— " my poverty, but not my will, consents ! "

These men generally did the coupling in the taverns, the landlord acting as clerk. One of them ran the public-house for a season himself, but more often they were paid a salary and the proprietor seized the fees, which were anything from a shilling and a glass of brandy upwards according to the status of the clergyman, but came sometimes to over fifty pounds a month exclusive of payments for searches and copies of certificates. The Pen in Hand gained such a reputation as a marrying house that three of its rivals pirated the name. The places were drunken and foul, but nobody minded

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being married in them. "The man appeared by dress a gentleman of quality," runs one register, "and the woman a lady of quality; all went away without telling their names. The gentlewoman when married had on a flowered silk round gown, and after she was married she pulls off her flowered gown and underneath she had a large full black silk gown on and went away in the same." It was there that Beau Brummel met his fate, and Lord Robert Montagu married Mrs. Harriet Dunch, of Whitehall, with a fortune of fifteen thousand pounds. Lords Annandale, Abergavenny, Mayo, Banff (the brother of the Lord Chancellor), and Henry Fox (founder of the Holland family), all went there. Joshua Lilly, "at the Hand and Pen next door to the china shop, ready to wait on any person in town or country," would have sent one of his parsons to their lodgings with register, cassock, gown and banns complete, any hour of the day or night, but their ladies loved romance.

The parish authorities were as much to blame as the quality, for they made a practice of sending their female paupers to Ludgate to marry and get a settlement somewhere else, and the expenses were cheerfully charged on the rates, seeing that they were benefited by the transaction.

Women who wished to disappoint their creditors were constant customers. All they need do was to marry somebody, and the debts were transferred to the husband's shoulders. "The man had five shillings for marrying her," runs an entry in one of the registers, "of which I had eighteen-pence. N.B.—The above-said person

marries in common." The above-said person certainly did, for within the space of fourteen months, under different aliases, he married four women at one marriage shop alone ! Again we read :—" Two guineas to provide a husband for Madam and defray all the subsequent charges of the wedding." There were plenty of broken men in the Fleet willing to oblige a lady and keep away afterwards. Occasionally, however, the scheme did not work out properly, as witness the lamentable history of Jane Hunter, who, when she was sued by a tradesman in the King's Bench, setup her marriage to one Matterson, a private in the Guards ; unfortunately for her, the plaintiff was able to prove that the guardsman got half a guinea for marrying her, and had a wife already. This helps us to guess at a possible explanation of the curious cases in which the husband was another woman dressed up : such a one was a thoroughly safe husband to have, for he would vanish for ever after the wedding.

" 20th May, 1737, Jno. Smith, gent., of St. James', Westm<sup>r</sup>., bach<sup>r</sup>, and Eliz. Huthell, of St. Giles', Sp<sup>r</sup>., at Wilson's. By y<sup>e</sup> opinion after matrimony my clark judg'd they were both women, if y<sup>e</sup> person by name John Smith be a man, he's a little short fair thin man not above five foot. After marriage I almost co<sup>d</sup> prove y<sup>m</sup> both women, the one was dressed as a man, thin pale face and wrinkled chin."—" 1 Oct., 1747, John Ferren, gent. ser. of St. Andrew's, Holborn, b<sup>r</sup>., and Deborah Nolan, do., sp<sup>r</sup>. The supposed John Ferren was discovered after y<sup>e</sup> ceremonie were over to be in person a woman."

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Some of the stories have a more sinister aspect, as witness that of Ann Leigh, an heiress out of Buckinghamshire, who was decoyed to the Fleet, married against her will, and used so barbarously that she was found lying speechless. A droll case in 1737 owes its preservation to the fact that the victim was a Ward in Chancery. The infant was plied with drink in a tavern near the prison, and married in that condition to Mary Hill, a woman of bad character. His mother asked the Lord Chancellor to intervene, and he promptly clapped Mary Hill within the prison itself, the infant being sent out of harm's way into Holland and bound apprentice to a merchant there. Mary Hill applied to Doctors' Commons for restitution of conjugal rights and an order for alimony, and the ecclesiastical judge gave her both. The husband refused to receive his wife ; his mother refused to pay the alimony ; they were duly excommunicated. Then the matter came again before the Lord Chancellor, who waxed very wroth. It was highly improper on the part of Mary Hill, he said, to invoke the aid of Doctors' Commons, inasmuch as she had seduced the infant by ill practices to marry her while he was under the care of this court : she must be restrained from further proceedings, and she must return to Doctors' Commons, and consent to the removal of the spiritual ban forthwith. If it was a marriage in law, at all events she was not to be permitted to make money out of it.

One of the marrying fraternity became so down-hearted with the "lying, bullying, and swearing, to

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extort my fees from the silly and unwary people, to advance the business and get the pelf, which always wastes like snow on sunshiny day," that he confessed "the marrying in the Fleet is the beginning of eternal woe." He made fifty-seven pounds odd every month of it, and left money behind him when he died, but he was the only lucky one of the lot.

What a wretched existence for an ordained priest ! Many had their families with them in the Liberty, and the only alternative was to take their turn at seeking alms from passers-by by crying "Pity the poor prisoners !" behind the grating. It is only right to say that some of them made such struggle as they could to maintain decency in their sacred calling, substituting for the most solemn words of the service something which sounded less profane in pothouses reeking with gin.

What the precise scandal was which brought this unspeakable traffic to an end is obscure. The official account of the matter is that the Peers were so scandalized by a Scottish matrimonial case, in which a man after a marriage of thirty years' duration with one woman was claimed by another woman on a pre-contract, that they proceeded to alter the law of England. Scotland indeed, they dared not touch, for it was then only eight years since Prince Charlie's march to Derby, and to this day the Scottish people are a stubborn race. The Bill which went through Parliament affected England only, and left Scotland where it was. England as a whole was bitterly opposed to any change. Mobs paraded the streets shouting that their liberties were being taken

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from them. Walpole denounced the Bill as the bane of society, and a golden grate designed to separate patricians from plebeians ; tyrannical, unjustifiable, oppressive and ridiculous. Ministers were driven to use the whole of their power and give orders to the placemen to vote for it before they could force it through. Lord Hardwicke's Act, as it is called, came into operation on Lady Day, 1754, and for a few months prior the Fleet lived halcyon days. On the 24th March, that year, two hundred and seventeen weddings were entered in one register alone. But the occupation of the Fleet parson ended then, and for seventy years from that date every marriage solemnized without banns, unless a licence had been obtained for it, was null and void.

The Fleet itself, burnt in the Gordon Riots, was finally demolished in 1846, and the Memorial Hall stands partly on its site. The very last wedding connected with it was something of a curiosity. "Mr. John Mossington, aged 76, and a prisoner in the Fleet more than 15 years, to Miss Anne Weatherhead, aged 62, at St. Bride's Church. The lady had travelled 36 miles to meet her bridegroom, who is without exception one of the most extraordinary men in this country. He takes his morning walks round the Fleet prison yard, which he repeats three or four times a day, with as much rapidity as a young man of 20. The courtship commenced forty-one years ago, and Mr. Mossington has now fulfilled his promise." (*The Times*, 10th July, 1840.)

## II

### MAY FAIR AND THE SAVOY



## II

### MAY FAIR AND THE SAVOY

IF THE Fleet parsons had some excuse, there were other sinners who had none. Several priests holding benefices conducted the same class of business, and although it would have been easy to stop all of them, only two or three were ever proceeded against. They were men of position with powerful friends, and such things counted for much in those days. St. James, Duke Place, Holy Trinity in the Minories, and the chapels of May Fair, Savoy and Lincoln's Inn are some of the churches in which irregular marriages took place. What those clergymen were capable of may be seen from two extracts from the register of Lincoln's Inn Chapel for 1709. "Then Thursday October the 6th were married Mr. Dampney's two friends, the one from Southgate, I think, and the other from a comb-maker's, Holborn Bridge." "Then Sunday January 1st were married by Mr. Halliday one William and Rebecca, etc."

The "etc." is a faithful reproduction of the precious original ! The entries seem to have been made by the clerk, but the chaplain was responsible for them ; clearly neither of the couples had anything to do with the Inn. Bans could not legally be read there in any case, but

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if they had been, or if the marriages were by licence, materials would have existed for making up the register in a proper way. They must have been sheer fly-away marriages.

May Fair was erected as a proprietary chapel about 1730 to minister to a part of the parish of St. George's, Hanover Square, which a few years earlier had been the dwelling-place of Jack Sheppard, but was now becoming a fashionable quarter ; and Dr. Alexander Keith, the witty and eloquent Reader at the Rolls Chapel in Chancery Lane, was appointed Preacher. The place appealed to fine folk who had no relish for the purlieus of the Fleet Prison, and presently the rector of St. George's was feeling the unfair competition of a man who specialized in marriage without any preliminaries. He took action in the Consistory Court, with the result that Keith was excommunicated and lost his chapel. Keith gave him a Roland for his Oliver by excommunicating him, the judge, and the bishop, and then set up a new chapel immediately opposite the other. He cunningly provided it with a porch "like a country church porch," an excellent advertisement in times which had not yet forgotten that it was in the porch that weddings once on a time were solemnized. He thought that his friends would protect him, but he was seized and thrown for his disobedience into the Fleet Prison, and there he remained for the rest of his life.

Officially that was the end of Parson Keith, but it is really where he begins. The Warden occasionally allowed his guests to take a trip to the Continent, but

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Keith was too notorious a prisoner to be at large, and he could not get out to serve his chapel himself. So he put in a curate and advertised lustily. "To prevent mistakes, the little new chapel in May Fair, near Hyde Park Corner, is in the corner house opposite to the city side of the Great Chapel, and within ten yards of it, and the minister and the clerk live in the same corner house where the little chapel is ; and the licence on a crown stamp, minister and clerk's fees, together with the certificate, amount to one guinea as heretofore at any hour till four in the afternoon. And that it may be better known, there is a porch at the door like a country church porch."

"Happy's the wooing that's not long adoing" was his slogan, and rumour declared it brought him six thousand marriages a year. Among the fashionables who went to his chapel to be married were the Countess of Orford, Lord George Bentinck and Edward Wortley Montague, and we have all heard how the Duke of Hamilton married the beautiful Eliza Gunning there with a bed-curtain ring. Miss Gunning certainly was married there in the small hours, but the curtain ring may be Horace Walpole's little joke. Handsome Tracy was coupled with the butterwoman's daughter in Curzon Street at midnight, too. It has even been said that George, Prince of Wales, married Hannah Lightfoot, the pretty Quakeress, in the chapel ; but he was really quite a well conducted young man, even rather slow, and it has been asserted there never was any such person as Hannah. Still, Hannah Lightfoot's marriage is recorded in Keith's register, though his name was not

George. Customers such as these brought in a revenue a bishop might envy ; he got considerably more from them than he did from the sale of "The Guide, or the Christian's Pathway to Everlasting Life." His wife died, and he caused her body to be embalmed at an apothecary's, "where she lies," said the *Daily Advertiser*, "in a room hung with mourning, till Mr. Keith can attend the funeral. The way to Mr. Keith's chapel is through Piccadilly by the end of St. James's Street and down Clarges Street, and turn on the left hand. The marriages (together with a licence on a five shilling stamp and certificate) are carried on"—and so through the usual advertisement, not forgetting the church porch. His son died, and the coffin was paraded through the streets with a placard setting forth the paternal woes and weddings. Then came Lord Hardwicke's Act to stop the business. In future, every marriage solemnized without banns being duly published in a church authorized for that purpose, unless a licence was obtained from the bishop for it, was to be null and void. "So they will hinder my marrying," cried Keith, "well, let 'em, but I'll be revenged ; I'll buy two or three acres of ground, and by— ! I'll underbury them." But that was the real end. On the day before the Act became operative (Lady Day, 1754), "before 11 o'clock forty-five couple were married at Mr. Keith's chapel, and when they ceased, near one hundred pair had joined together, two men being constantly and closely employed in filling up licences for that purpose." Then the chapel was closed and Keith became an object of charity. The man who used to print his marriage

certificates for him addressed an appeal to the compassionate when he had "scarce any other thing than bread and water to subsist on," and he died on the poor side of the prison.

But there was one church where the Act was set at defiance. Dr. John Wilkinson, minister of the Savoy, ought to have been above such things. His chapel was royal and ancient ; he was lodged in a house which his son described as "large enough for three modern ones, with old double stone staircases, being in fact the apartments occupied by King John of France when he was a prisoner in England." But the Treasury was not a first-class paymaster, and the Doctor was fond of good living and high society ; money must be had, and as previous chaplains of the Savoy had issued marriage licences in their own names, Wilkinson took the risk of continuing to do so after the Act had been passed, and shut his eyes to the fact that the marriage, which before would only have been irregular, would now be absolutely void. His son Tate, afterwards a theatrical manager of repute, who wrote a defence of his father, says that he "judged he had the right to grant licences as usual, and that it was a privilege annexed to the Savoy as being extra-parochial. Those marriages brought in a profusion of cash, and instead of thinking of a rainy day, all was rat-tat-tat at the street door, and a variety of company." He advertised much in the same manner as Keith. "By Authority—Marriages performed with the utmost privacy, decency and regularity, at the ancient Royal Chapel of St. John the Baptist in the Savoy, where regular

and authentic registers have been kept from the time of the Reformation (being two hundred years and upwards) to this day. The expenses not more than one guinea, the five-shilling stamp included. There are five private ways by land to this chapel, and two by water." Before the Act there had been fifteen marriages in a year : two years after there were one thousand four hundred. Nobody who came there had to wait. "He asked if it was by consent of parents ; the groom answered, yes ; he asked where they lived and they told him, and they were married directly ; the licence was filled up afterwards."

He was warned time and again, and at last a warrant issued for his arrest. He got down to the river through the garden gate, and as the tide was out he was able to keep along the bank in the mud until it was safe to hail a boat. He left behind him as his substitute a man named Grierson, who had once acted for Keith and had already been in trouble for "marrying Jonathan Brooks to Mrs. Mary Redding, spinster, in an empty house against her will." Grierson's undoing came about in an interesting way. He married two members of the Drury Lane Company, Joseph Vernon and Jane Porter. Garrick got hold of the marriage certificate and asked the Treasury officials whether it was a good marriage. The result was that Grierson exchanged his pulpit for the dock at the Old Bailey. The case shewed how carelessly things were done at the Savoy, for Miss Porter was a minor and her father was living, but Grierson had been quite satisfied to get the consent of her

mother. He was convicted of performing the marriage without banns or licence, and transported for fourteen years, but public sympathy was so much on his side that Vernon was hissed off the stage and had to relinquish his profession.

Wilkinson himself had to surrender at last. Portions of his speech at his trial have been preserved, and they have the ring of his eloquence still in them, although he must have realized he was due for fourteen years on the plantations in Maryland too. After the conviction his friends rallied round him as a man "who always did his duty as well as any gentleman of the function," and "with every comfortable necessary as a gentleman, all his valuables, clothes, writings, bureau, cash and recom-mendatory letters," and with thirty pounds paid to the captain to redeem him from being sold to a planter at the end of the journey, he sailed in a convict ship, but died during the voyage out of eighteenth century gout.

The marriages upon licences he had granted himself were all void, and the children illegitimate. All manner of trouble ensued. Some money was left to the "legiti-mate children of Charles Standish," and there were two separate families to claim it. Standish had been married by Wilkinson, then he had left his wife and married another woman. The Savoy marriage certificate stated that the marriage there had been by banns, but Standish swore Wilkinson told him the banns were only read twice, being objected to on the second reading. However, while the judges believed what he said, the jury did not : they found the children of the first marriage

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were his lawful children, and they bastardized the second set of children. One can see what a frightful position the thousands of people married by Wilkinson were left in. Parliament ought to have helped them, but, of course, it never did.

His son Tate naturally thanked Providence that his father did not live to land in America a felon, but Wilkinson was far more of a villain than Keith was, for those who went to Keith did come away married, but Wilkinson's victims were not married at all. The cynical eighteenth century admired them both.



(Facing page 32)  
*Princess Victoria de Bourbon (Princess of Capua)*  
(See Chapter III)



# **III**

**GRETNA**



### III

#### GRETN A !

GRETN A is more famous for marriages than Newcastle for coals, but there never was a blacksmith, and no one really knows how that legend got about. There were at least three places in the parish where a master of marriages might be found : at first there was only one, the King's Head at Springfield, but the route of the main road was changed, and then there was Gretna Hall on the Green itself, and the toll-house at Alison's Bank, the first house in Scotland on that side the Sark. Those who came trudging it and those in a headlong hurry plunged into the toll-house and matrimony the moment the bridge over the little river was crossed : the quality generally risked the extra half mile to the green. Anyone would have served to witness the marriage, but the rules of the game insisted on a man who made a speciality of the business—old soldier, fisherman, pedlar, tobacconist, or local postman. How these priests worked themselves into their monopoly is a marvel, for it only required a dirty register and a few printed forms of certificate. They took their calling so seriously that one of them went mad and married every couple he came across until people ran away from him, and another, when he lay on his death-

bed, roused himself to celebrate three more weddings, and died with the three hundred pounds he received for them in his hand. Joe Paisley has been sketched by an official pen : "A fellow without education, without principle, without morals, and without manners. His life is a continued scene of drunkenness ; his irregular conduct has rendered him an object of detestation to all the sober and virtuous part of the neighbourhood. Such is the man (and the description is not exaggerated) who has the honour to join in the sacred bonds of wedlock many people of great rank and fortune from all parts of England."

The traffic in English matrimony began when Fleet marriages came to an end and the parsons of the Savoy were transported. Young heiresses who differed from their parents, and those also who had other reasons for avoiding publicity, soon found out that outside England the old law of Europe still prevailed. Our law always has been eccentric, and so long as its letter was not broken and the marriage took place somewhere where it was legal, it was open to everybody to cheat the statute. The Isle of Man attracted for a time, until the Tynwald passed an Act similar to the English one, with a playful little addition that the man who performed the ceremony, if he was not a Manxman, should have his ears nailed to a pillory at twelve o'clock noon for an hour, after which they were to be cut off and remain there, while the rest of him was taken back to prison and only released on payment of fifty pounds. Some of the runaways went to the Continent. Vessels were kept ready at Southampton

## GRETNNA !

to carry them to Guernsey for four guineas a couple. But the Great North Road, though bumpy enough, was less disconcerting to delicate organisms than the rolling waves, and Gretna became the fashionable resort. "It furnishes the knave with a cloak and the assassin with a dagger," said the moralist ; and yet we read that "an Archbishop of Canterbury, a Lord High Chancellor, and a Lord Privy Seal (all at one and the same time in the Councils of George III), each of them by an elopement evinced his regard for nuptial restrictions, and by a marriage before the blacksmith testified his obedience to the law." The early registers are wholly missing, possibly burnt, and indeed there are hardly any books at all now, but the first marriage we have any account of opens the ball in proper fashion, for John Edgar and Jean Scott, both of Cumberland, came across the Solway by boat, and between a storm and the incoming tide their own boat was upset, one of the pursuers was drowned, and the chase abandoned.

As regards Lord Chancellors, there were three who perpetrated a Scottish runaway marriage. Lord Erskine in his later years married his housekeeper, Mary Buck, at Springfield. The man who performed the ceremony, Robert Elliot, has left a record of it which seems incredible. According to him the Lord Chancellor was disguised in woman's clothes and came with the bride and four children, part of his object being to legitimise the children so far as the other side of the border was concerned. In point of fact there is no trace of any other child but one by Mary Buck, and that one was born

## MARRIAGE A LA MODE

after the marriage. The name of "Lord Erskine" is scratched on the windows of the inn in two places, but it was done by two different hands, and certainly not by him, for he would never have written his name in that form. Lord Eldon ran away from Newcastle with Miss Surtees, a banker's daughter, letting her down from an upper storey window by a rope ladder : the marriage took place next day, not at Gretna, but at Blackshiels, near Edinburgh, and was repeated after the father relented at St. Nicholas, Newcastle. The third Lord Chancellor is Lord Brougham, who carried through an elopement in 1819 to Coldstream.

Not all the marriages were so respectable. There were two ladies staying at Bath, both of the name of Trist but not related to each other, the one a member of a county family, the other the heiress of a tailor in the Strand, and worth £40,000. A young Frenchman heard that this money was going, and rushed to Bath to get hold of it. He lost no time in wooing ; he fascinated the damsel with the prospect of an excursion to Gretna. After it was all over and they were back in England again, he lightly mentioned the tailor's shop. As the reader has already guessed, he had married the wrong Miss Trist. The poor thing had some money, however, and he spent it all before she died from ill-usage.

" To hang or wed, both hath one hour,  
And whether it be, I am well sure,  
Hangynge is better of the twayne,  
Sooner done, and shorter payne."

Elliot's Memoirs are disappointing, for the canny Scot omits nearly all the names of the couples whose marriages

he knew about, and it is impossible to say when he is romancing. A few of his tales will be enough. The most gruesome is that of a father who arrived too late, shot his unwanted son-in-law dead in the bridal chamber, and dragged his daughter home to die of a broken heart. But his sympathies are always on the side his bread was buttered. A couple were held up at Lancaster for want of funds, and when the pursuing uncle arrived and retired to rest in the adjoining room without realizing they were under the same roof, they had the sense to steal his purse, his clothes, and his chaise and four, and got to Gretna first. Another pair of doves were detained by an accident to their vehicle ; they turned it round in the road to look as if it had been coming the other way, and the hunt swept by as they hid behind a hedge. When they got to Gretna they were duly warned to keep away, for the old woman who kept the inn sent lad Sawney "to gang doon the brae and tell the puir young things the lassie's auld kankard dad and another chiel as ill as himself were ready to tak them." So they sped on far into Scotland and bided there till the old men tired of keeping Robert Eliot drunk, and went home after a fortnight. Then there was the young parson—a beneficed man, too, who ought to have known better—who broke his journey at Liverpool to book a couple of seats in the coach back to Birmingham, whereby his father wasted eight fatal hours in going to Birmingham after him. And another lover fell into love at Whitby, and when the maiden was taken home he changed clothes with a seller of toys of venerable aspect, and in that disguise he resumed communications

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with the lady. Then followed the rope ladder and the wild flight to Gretna. The father, of course, arrived too late, and the new-made husband addressed him nobly thus : “ Do what you will with me, your lands I value not ; but not one hair shall you hurt of this dear lady’s head while I am able to protect her.” These words softened the parental heart, and led the way to refreshment and reconciliation.

There is some trace of truth in these stories. Mrs. Kendal has told us how one of her own family had only just been made happy for life when the pursuing party reached the inn, rushed passed the priest and his register, and made for the inner chamber. Outside the door the gallant bridegroom stood, his arms outstretched : “ Gentlemen, you cannot pass ; this is my wife’s room.”

Sheridan was married to Miss Grant at Gretna, the famous Lord Cochrane to Katharine Barnes, Lord Archibald Douglas to Caroline Clayton (none of your chaise and four for the Douglas ! he and his bride rode there on horseback), Charles Ferdinand Bourbon, Prince of Capua, to Penelope Smyth. The last-named lady was of a good Irish family in County Cork, possessed of twenty thousand pounds, and lived for a time in Exeter before she went abroad to travel and met her future husband. The prince married her first in Rome and then in Madrid in spite of the opposition of brother Bomba, King of Naples. They were married again by John Linton at Gretna Hall in April, 1836. Thence they came direct to London and applied in Doctors’ Commons for a licence for a fourth marriage. A licence, however, is a

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matter of discretion, and the Neapolitan ambassador entered a caveat which resulted in it being refused. They put up their banns at St. George's, Hanover Square, and the ambassador again attempted to stop them, but the marriage came off, and the lady became more than ever the Princess Victoria de Bourbon. She had always said she would not marry anyone but a prince, and thirteen rejected suitors attended her wedding at Hanover Square.

The elopement of the Earl of Westmorland with Miss Sarah Child remains the most picturesque story of all. The wealthy banker lived at Osterley Park, with a town house in Berkeley Square. The tradition goes that when the Earl asked him for his daughter's hand, he told him, "Your blood is good, my lord, but money is better." However that may be, he had good cause to regret the advice he gave when the Earl asked him at dinner what should be done in a case where a father discouraged the addresses of a suitor to his daughter. "Run away with her," said the banker, and "Rapid Westmorland" ran away with her accordingly a few days later. The duenna was drugged, a carriage was in waiting at midnight, and the couple were well on their way before the old watchman in the square had time to think it over. Elliot declares that when they reached Shap they engaged all the horses in the village to delay the pursuit, but the infuriated banker overtook them at Hesketh-in-the-Forest. Mr. Child shot the Earl's leader, but the leatheren thongs of his own carriage were cut through by a clever postilion, and while the Earl dashed forward with the three horses left to him, the other vehicle collapsed in the road. The

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Countess of Jersey gives another account, which no doubt is the correct one. She says that a servant despatched in advance on horseback overtook the fugitives. "Shoot, my lord, shoot," cried Miss Child, and the Earl promptly shot at the horse and brought it down. So they came to Gretna and Old Joe Paisley married them. After that there was nothing for it but a more orthodox marriage in church. But the banker never forgave them, and when he died he did what he could : his money was not left to his daughter, but to the first daughter she might have, provided she was christened Sarah and took the name of Child. That child in due course came herself to Gretna and married the Earl of Jersey.

# **IV**

**THE AMAZING HISTORY OF MR. WAKEFIELD**



## IV

### THE AMAZING HISTORY OF MR. WAKEFIELD

EDWARD GIBBON WAKEFIELD came very near being the worst villain who ever drove to Gretna. He played the part to perfection up to a certain point : then he forgot he was a villain, and tried to believe he was acting as a gentleman. There was something in him, possibly the result of heredity, which took the edge off his villainy, sustained him during his punishment, and ultimately set him again in the path of honour. He was a compound of two individualities. One of them perished in prison ; the other, in spite of the brand of the gaol-bird, became the Imperial pioneer, atoning for his crime by brilliant services to the English race. The bust of Wakefield in the Colonial Office is truly a sermon in stone. His fame will long survive that of the judge who tried him, for Mr. Baron Hullock is now only remembered by one or two anecdotes, and his portrait has ceased to hang in the Hall of his Inn.

Wakefield came of an old Quaker family ; his father was a practical philanthropist, and his grandmother Priscilla wrote excellent books for the young. Elizabeth Fry was his cousin. When he was twenty he ran off from Tunbridge Wells with a Ward in Chancery, the orphan

heiress of a Canton merchant. On that occasion he engaged two carriages, and while he went one way with the heiress, a couple of counterfeits went the other. Fortune smiled upon him, for her relatives reconciled themselves to the marriage and obtained him a post in a foreign embassy.

In 1826, being then a widower with two young children, he engaged in a matrimonial adventure of a wilder kind. He was living in Paris, and got wind there of a most valuable young woman, just turned fifteen, who was being educated at a seminary for young ladies in the outskirts of Liverpool. Her name was Ellen Turner, and she was an only child. Her father, who had an estate near Manchester, had amassed a great fortune in commerce, and was High Sheriff of the County : there was also an opulent uncle who would in due course leave her his money. Wakefield resolved to secure the prize. The matter presented itself to him as a business proposition : he was eager to enter Parliament, and her wealth should make him the member for Macclesfield.

The campaign opened slowly. His stepmother obtained an introduction to the young lady's mother, and got upon visiting terms with her. The next step was to scrape acquaintance with one Grimsditch, who was the family solicitor, and then Wakefield and his brother came over from Paris under assumed names. Presently, however, it transpired that Mr. Turner and Grimsditch had gone together to London for a week, and the gradual advances of a regular siege were at once abandoned for a direct assault. Neither of the brothers

## THE AMAZING HISTORY OF MR. WAKEFIELD

had at that time seen their intended victim, as she was away at her school, but the report of her was eminently satisfactory—so why not marry her first and let her fall in love afterwards?

They purchased a carriage, and a confederate dressed to resemble a “steady servant” drove to the school with a letter for the mistress. The letter purported to come from a doctor who had been suddenly called in to attend to Mrs. Turner. Could Miss Ellen be permitted to come home at once, as her mother was seriously ill? No one at the school dreamed that a trick was being played, and it was only a matter of a few minutes before Ellen was in the carriage and off to Manchester. It was eight o’clock on a Tuesday morning when she started, and she entered the Albion Hotel at Manchester at half-past one.

Wakefield introduced himself to her as soon as she arrived. He told her his name and said her father had asked him to meet her and tell her what had really happened. It was not that anything was wrong with her mother, but her father found himself in financial trouble, and did not wish the people at the school to know why he had sent for her. Some country banks had failed, and as he was involved in their failure it was unsafe for him to go home. He wished to see her as soon as possible, and Wakefield was to conduct her to him. The poor girl had no reason to doubt what was said. She knew there had been some bank trouble, and one of the pupils in her school had been removed in consequence. The last time her father came there he had made a jesting remark about losing his money. She hurried back to the carriage,

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and Wakefield and his brother drove with her to Huddersfield. There he alighted to make enquiries, and when he returned he said they were to go on to Halifax. It was dark by the time they reached Halifax. Her father had already left, and they travelled on after him through the night to Kendal. At Kendal they breakfasted, and Wakefield was given a letter. He said it was from her father's solicitor, Grimsditch. He read it to her. It dwelt upon the financial catastrophe and the danger of her father's arrest ; Wakefield's uncle, it went on, was a banker at Macclesfield who had advanced no less than sixty thousand pounds in a vain endeavour to bolster up the unhappy man's credit ; he was threatening now to realize the security he held, and the only way to save Mr. Turner from being turned out of house and home by this fictitious uncle was for Ellen, if she would, to marry the nephew forthwith. Wakefield was as much upset as she was, and assured her he was anxious to do anything in his power to help her, the more especially as she had already excited his respectful admiration. He had ascertained that the Sheriff's officers were after her father already : he had fled to Carlisle, hoping to escape over the border.

The rogue was a past master in the art of persuasion, and the tale was artistically told. She was grateful to him for his kindness to her in her troubles. But what was she to do ? She would see her papa before giving her answer, and they must press on to Carlisle.

They reached Carlisle. There was a crowd there round the Bush Inn, so her companions went into the

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house to investigate. They came back, entered the coach, drew up the window that they might not be overheard, and told her the place was swarming with officers. Her father was with Grimsditch, hiding in a room at the rear of the premises : she could not possibly see him.

She has given her own account of the way she was deceived : "He said to me that my papa requested me, if I ever loved him, that I would not hesitate to accept Mr. Wakefield as a husband. I then consented. I was induced to consent by the fear that if I did not my papa would be ruined. I believed what they told me." The prize was won !

Gretna was the next step. The girl was little more than a child ; she had had little or no rest since she left the seminary, and must have been worn out with worry and fatigue. At two o'clock on the Wednesday afternoon she was wedded to her abductor by David Laing, who then officiated at the marriage factory. Laing was not the man to ask awkward questions or notice anything wrong ; he considered his customers "were in the very best of comfortable spirits." Something like forty pounds was paid him for his services. He proved a choice witness subsequently at the Assizes, dressed like a sporting parson with top-boots and three-cornered black hat, and his examination at the hands of Mr. Scarlett, who was counsel for the defence, is too good to omit.

"Who are you, Laing ?"—"Why, I live at Springfield."

"Well, what did you do in this affair ?"—"Why, I

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was sent for to Linton's, where I found two gentlemen, as it maybe, and one lady."

" Did you know them ? "—" I did not."

" Do you see them in court ? "—" Why, no, I cannot say."

" What did you do ? "—" Why, I joined them, and then got the lady's address, where she come from, and the party's, I believe."

" What did they do then ? "—" Why, the gentleman wrote down the names, and the lady gave way to it."

" In fact, you married them after the usual way ? "—

" Yes, yes, I married them after the Scotch form—that is, by my putting the ring on the lady's finger, and that way."

" Were they both agreeable ? "—" Oh yes, I joined their hands as man and wife."

" Was that the whole of the ceremony—was it the end of it ? "—" I wished them well, shook hands with them, and, as I said, they then both embraced each other very agreeably."

" What else did you do ? "—" I think I told the lady that I generally had a present from 'em, as it be, of such a thing as money to buy a pair of gloves, and she gave me with her own hand a twenty shilling Bank of England note to buy them."

After that there was some "shumping," as Laing called it, and he drank a good deal of it himself. Ellen did her best to keep up appearances, and we are told that she sat on Wakefield's knee in the parlour.

## THE AMAZING HISTORY OF MR. WAKEFIELD

The pair so strangely married took their way back to Carlisle. Poor papa was no longer there, but all was well ! A post-boy had been sent on ahead to tell him about the marriage, and he had gone home, or had gone to London Town—Ellen was too tired to be certain which it was—and she was to follow again. They went as far as Penrith that evening, and at last she had a night's rest.

Wakefield consistently abstained from this time forward from taking any advantage of his position as her husband. This is the singular redeeming feature in the case. He was courteous and considerate, and appears to have been honestly desirous of winning her affections before intruding any attentions upon her. Human nature is exceedingly complex, and one shrinks very much from believing that he was only astute, counting on the favourable effect his forbearance might have with the parents of his bride ; if it were so, he over-reached himself.

The next day, Thursday, they continued the journey to London in a public conveyance, arriving late on Friday night. They put up at the Brunswick Hotel, but in a couple of hours were on their travels again. The gallant had experienced a fright. He had been told that the officers had materialized now in grim earnest, and there was a warrant out for his own arrest. He declared papa had crossed the Channel and wished them to follow without delay. They posted to Dover and reached Calais on Saturday morning.

It was time the journey came to an end. Ellen had been six hundred miles since the Tuesday with only one

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night's sleep, trembling the whole time with concern for her father.

Meanwhile her family were really wholly unaware of what had happened. They thought she was at her seminary. But on Saturday a notice of the marriage appeared in a London newspaper, and Grimsditch read it with amazement. Mr. Turner had already left London, and he was nearly home before he could be overtaken. He rushed back again, and then there was not only a warrant, but a special despatch from the Prime Minister to the British Ambassador in Paris.

Wakefield professed to be much surprised when Ellen's father was not to be found in Calais. They waited there for him, and meanwhile Wakefield wrote him a letter, imploring him to suspend judgment till he could learn all the facts and decide for himself whether his child's prospects of happiness had been seriously affected. "I beg that you will take the trouble to know me, and to learn from all my friends whether or not your daughter has made an unhappy marriage. I trust in God and firmly believe that she has not, and if I shall succeed in making her completely happy, you must be satisfied. I must tell you that she pines to see you, and watches the arrival of every packet as if her life depended on seeing you in it. She is a dear affectionate creature, and well deserves from you as much affection as she feels towards you." He longed for an opportunity to repair the wrong he had done, he said, feeling that she had a claim upon his devoted tenderness !

Mr. Turner broke down altogether in London, and

## THE AMAZING HISTORY OF MR. WAKEFIELD

the pursuit was taken up by the girl's uncle, along with Grimsditch and a Bow Street officer with the warrant, which was more ornamental than useful, the quarry being out of the jurisdiction. However, in Calais on Wednesday morning they found Ellen and the new Lochinvar watching on the pier.

A scene followed at the hotel. The attorney said a blow had been struck at the peace of a respectable family, the effects of which he could never repair, and it would be the death of Mrs. Turner, if she was not dead already. The marriage was a mere farce, and he could rest assured he would not escape prosecution. Wakefield protested that whatever might be thought of his conduct in carrying off a lady he had never seen—he had a daughter himself, and he believed, if any man had treated her in the same way, he would have sent a bullet through him!—she had been perfectly safe with him, and now he had conceived a sincere affection for his Ellen. The lady, for her part, when she realized what a pack of lies she had been told, exclaimed, “Oh, he is a Brute—he has deceived me; and I never called anyone a Brute before!” She threw her arms round her uncle’s neck. “You must acknowledge I have behaved to you like a gentleman,” said Wakefield. She replied, “Yes, I do acknowledge that, but you have deceived me; I will never go near you again. I will go with my uncle.”

He still insisted that she was legally his wife, and then they all appealed to the French authorities, who took the view that it was better she should go home.

Wakefield yielded reluctantly, but he said he was

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resolved to follow and take the consequences. He was fully alive to the fact that he had broken the law and might be sent to prison, but he hoped that her father would condone his acts and receive him as a son-in-law.

Writing a description the next day to his brother of what had happened, he says : " Nothing could be more hostile than the whole spirit of their proceedings. I could readily have escaped with Ellen, but their account of Mr. and Mrs. Turner's state made such a step impossible. I made and gave in writing a solemn declaration that she and I have been as brother and sister. How this may affect the validity of the marriage I know not, nor could I raise the question. I was bound, and it was wise, to give some comfort to Mrs. Turner. I am now in a stew about you, and wish you were safe. There can be no doubt that the law can punish me. For myself I will meet it, come what may, but if you are able, pray get away as soon as possible. I do not care a straw for myself. The grand question now is, Is the marriage legal ? They all said NO, and quoted *William and Mary* upon me till I was tired of their Majesties' names." There is something about this letter which makes one rather like the writer.

In France he might have remained scot-free, and his return to England was an act of some courage. His luck had deserted him, and at the ensuing Lancashire Assizes he was sentenced to three years in Newgate for abduction.

The marriage puzzled the lawyers : there was no known way out of it. It was impossible to resort for relief to Doctors' Commons, for Ellen was the only person who

## THE AMAZING HISTORY OF MR. WAKEFIELD

could tell the story, and under the rules of evidence existing then, she could not be called as a witness. Finally, Mr. Turner submitted in a petition to the House of Lords "that the extraordinary acts of premeditated fraud, forgery and deceit, which present a case entirely new and wholly unparalleled in this country for the last century at least, fully justify the interference of Parliament to declare null and void the alleged marriage by an Act of the Legislature." It required a Statute to undo the knot which Laing had tied at Gretna !

Three years after the abduction Ellen was quietly married to a country squire. Wakefield's history can only be sketched here in brief outline, although it is the most remarkable part of the story. The man who had despicably attempted to possess himself of an ingenuous and confiding girl of fifteen for the sake of her money developed in his enforced seclusion the nobler side of his character. He was one of the few who benefited by a residence in Newgate. He composed, while there, an account of the horrors of the prison system which led to radical improvements in the administration of criminal justice. Also he published a pamphlet on the right mode of colonial development which contained the germ of his immortal treatise on the Art of Colonization, and paved the way to labour which was worthy of him. After he had completed the term of his imprisonment he threw himself ardently into the work of promoting the Empire, and rapidly came to the front. South Australia was developed upon the lines he laid down, as a colony where there were no free grants of land and there was

no convict labour. He became a Member of the Canadian Legislature, and the Durham Report, foreshadowing the present constitution of the Dominion, was inspired by him. But the greatest achievement of all was the winning of New Zealand for this country. The French were on the point of annexing it when Wakefield sent out a party of English settlers and compelled a reluctant Colonial Office to raise the British flag. In New Zealand he spent the closing years of his life, helping to found the Church of England settlement at Canterbury, and wisely guiding public policy there. He never quite lost the reputation of readiness to achieve worthy ends without a scrupulous consideration of the means he employed, but on the whole he succeeded in living down the memory of his early folly.

If his trip to Gretna had not ended in disaster the world might never have heard of him, and his life might have been wasted living on his wife's money. The short cut to prosperity would have deprived him of the incentive to work. As things turned out, there is no part of the British Empire which does not feel in the actual circumstances of this very day the effect of his labours as a practical statesman.

It has been said that the first stages in his career ought now to be buried in oblivion : we cannot afford to forget such an extraordinary instance of a man rising on his dead self to higher things.

**V**

**GRETNA WITH THE GILT OFF**



# V

## GRETNNA WITH THE GILT OFF

AS THE place to be married while you wait, Gretna flourished for a whole century. The English from time to time invited the Scots to alter their law, and were told if they wished for a change they had better alter their own, for Scotland was content with things as they stood. The mischief was at its worst in the border counties, where it affected all classes of society, as the trip into Scotland cost little or nothing, and one of the matrimonial blacksmiths tells us he expected to fashion forty wedlocks a day on his own anvil when the hiring fair was held at Carlisle. The neighbourhood was particularly unwholesome for any heiress.

John Atkinson was a most respectable young man, highly thought of at Appleby, and though he was only twenty-three years of age, he held the post of organist at the parish church. He was professor of music at the most select seminaries for young gentlewomen in the district ; even Miss Jemima Bishop, principal of Ivy House, engaged him to teach in her school. But there was a rift in his lute. His attentions to the pretty maidens were rather remarked, and they began to be merry among themselves about the favour he showed to

Annie Jane Ward. Annie was just three months more than twelve, but she looked quite sixteen, some would have said even seventeen or eighteen, and Miss Bishop, who was never given to flattering anyone, thought she might be considered handsome. What was possibly more to the point, though it seems unkind to say it, her father was a gentleman of position in the neighbourhood of Windermere, and she possessed ten thousand pounds in her own right—in fact, she was a fortune. Miss Bishop took alarm, and in the most ladylike manner, together with a cheque for past services and promises of future recommendation, intimated to Mr. Atkinson that she was reluctantly compelled to change the music master. As for Miss Annie Ward, who took it badly and declared she would elope, correction was administered to her in a proper and dignified way. But the minx contrived to send a little gold locket in the shape of a heart to the music master, and somebody peached. Miss Bishop wrote to him with a certain asperity requesting the favour of its immediate return, dwelling upon the childish folly of a girl twelve years of age, and reminding the organist of the regard he should have for the high reputation which he enjoyed. He replied that he had lost the locket and she had to write to him a second time, threatening that proceedings would be taken to recover it. Apparently she was too much for him, for he brought it back then, and excused himself for the delay by telling her it was so small that he had mislaid it and only found it again with difficulty.

But Bella, one of the maids, was fond of a bit of sweet-hearting herself, and her mistress was wholly unaware

#### GRETNNA WITH THE GILT OFF

that she was acting as a private postman. Suddenly the peace of Ivy Villa was destroyed for ever as by an earthquake.

The whole school had been spending a long happy day by Ullswater Lake, and came home late and tired out. At midnight Annie was tucked up in bed and Miss Bishop observed that her light was safely out. At four in the morning there was a slight noise in the house, and the schoolmistress went downstairs and found the front door open. She put it down to some careless servant, Bella perhaps, so she closed it and returned to her couch, resolved to speak about it in the morning. Three hours later she went to Annie's room, and Annie was no longer there. What had been happening is best gathered from a letter written by that fast little madam herself, which will serve to correct the general impression that the young ladies of a former generation were very different from those of the present day, even at twelve years of age.  
“ My dearest John,—You have no idea of the joy with which I received your letter. You asked me to say one word. I think it will be ‘ yes.’ And you asked me to fix the day and way of escape. I shall say next Thursday week, and to get up in the morning about seven o'clock, then Bella will leave the front door off the catch. I am to leave it open to set our tyrant off her guard, and then to slip down the street, but I shall leave you to fix the place we will meet, but at all events it must be retired. You need not have any misgiving in laying open your heart before me. You might have been sure I should only be too happy at your doing so. I should have

#### MARRIAGE A LA MODE

enclosed another stamp for the one you sent, but Old Crossy takes care to keep them herself, and if I ask her for one she will know who it is for. And now, dearest John, when you write to Bella, send something for me and say if you accord to my arrangement. And now, with kindest and truest love, believe me, ever your affectionate, sincere and true—Annie."

It is clear that the arrangement was slightly modified, for there was no sleeping at Ivy House for Annie that night. As soon as all was quiet she slipped down into the street. John had a young farmer friend whom he had taken into his confidence, and he was waiting round the corner with his father's shandry at twelve-fifteen. They drove at once to the border, reaching Sark toll-bar, the first house in Scotland, between seven and eight in the morning, and John Murray, the toll-keeper, lost no time in doing their business for them.

It has been remarked that, however remiss Miss Bishop may have appeared in the preliminary stage, in the emergency her actions were prompt and judicious. Romance has a poor chance against the resources of modern civilization. She telegraphed the parents and the police, and then her instinct told her to go to Gretna. A few hours later she was having an indignant interview with John Murray. That worthy produced a register book of great thickness which seemed to have been well filled in three months, and—there was the entry! Meanwhile the pair of runaways had made the fatal mistake of leaving their shandry and taking the train to Carlisle. The station there was watched, and they walked straight into the arms

#### GRETNNA WITH THE GILT OFF

of the police. Annie begged and implored to be allowed to go with her husband, but the county gaol was no fit place for a honeymooning couple. She was marched off and handed over to her mother, who took her away and hid her. As for Atkinson, his address became care of the Governor of H.M. Prison until the next assizes. He was charged with abducting a girl under the age of sixteen, and the trial was an immense success from the spectacular point of view, the court house being densely crowded with the rank and fashion of the North Country. The prosecution denounced him as a heartless scoundrel, but his own counsel had courage enough to assert that it was a case of genuine affection on both sides. Miss Bishop gave evidence, and got a tremendous advertisement which may or may not have been good for her school. It was impossible to put up any real defence for Atkinson, as she swore she had told him what the girl's age was, and in the end he was sentenced to nine months. He tried in vain during the hearing to discover what had been done with Annie, and he clearly intended to claim her when he came out of prison. And that he was entitled to do, for although she was incapable by law of consenting to abduction, she had attained the age at which she could consent to become a wife. There was no means of saving the precocious girl from the future she had prepared for herself.

If cases like that of Atkinson and Annie Ward, Wakefield and Ellen Turner, had been common farther South, the Scottish back door to English matrimony might have been closed earlier than it was, but the

## MARRIAGE A LA MODE

fashionable world and those who worshipped it regarded Gretna as an established institution. Pleasant entertainment had recently been afforded by the escapade of Lady Adela Villiers, daughter of the Earl of Jersey, who kept up ancestral custom by eloping after the fashion of her mother and her grandmother. The account which appeared at the time indicates that society was amused when it should have been shocked. The family had some slight acquaintance with a certain Captain of Hussars. They were down at Brighton, and Lady Adela was in the drawing-room with her father. The dressing bell sounded : she left him reading the newspaper and went to her room, but instead of getting ready for dinner she put on a plain travelling dress and walked out of the house. Presently there was a vacant place at the table, and her brother hurried to find out what had occurred. At the railway station she had been joined by a tall military gentleman, and they took the train to town. After that it was merely a matter of railway time-tables, and the naughty pair reached Gretna first. There was a second wedding in London at St. Pancras, and everybody seemed to be happy.

Cumberland magistrates took a different view. The marriage man from Lamberton, just over the border, was caught marrying his clients in a public house at Berwick. He would never have done it sober, but they had made him so drunk that he did not know where he was. He got seven years. A couple of men who practically drugged a woman and took her to Gretna in that condition, received sharp sentences. The railway trains





(Facing page 65)

*A False Alarm on the Road to Gretna: "Tis only the Mail!"*

(See Chapter V)

(From the painting by C. B. Newhouse)

#### GRETNA WITH THE GILT OFF

were vulgarizing the journey north, marriage in church was decreasing as irregular marriages were increasing, and drastic action was imperative. Lord Brougham, a proper expert, seeing that he had once run away to Scotland himself, presented a petition from Cumberland and brought in a Bill. In the debate which followed it was stated that a thousand of these marriages had taken place the year before on the Gretna-side of the border, and at least as many on the Coldstream side, and if the woman had money they were permanent, but if she had none she was abandoned. The Bill became law, and since 1856 no irregular marriage in Scotland has been recognized unless one of the parties has usually resided there, or has lived there for the twenty-one days immediately preceding the marriage.

After that Gretna was dead for most practical purposes, and very few people of note resorted thither. In 1864 the Marquess of Hastings took Lady Florence Paget there before John Murray. She was at the time engaged to Mr. Henry Chaplin, and the date of her wedding to him had been fixed. When she returned to London she married the Marquess again, rather hurriedly but more respectably, at St. George's. The Marquess, however, was hardly a lucky man, for he dropped one hundred and three thousand pounds when his rival's horse won the Derby, and he died soon afterwards, childless.

It may be interesting to refer to an authentic record of the form of marriage at Gretna when the parties were in no particular haste. It was a travesty of the English

marriage service designed to impress the simple Southron and extract the siller. There was not a word in it to displease the most fastidious. A man named Bell, of some position at home, for he was clerk of the peace for the County of Westmoreland, was desirous of marrying the local shoemaker's sister, but it was not the kind of thing he wanted the bench of magistrates to know. He went to Gretna with her on the day of Carlisle hiring-fair, and enlisted the services of John Murray, keeper of the toll-house alongside the Sark. The following form was used.

" Do you, John Bell, take this woman as your lawful wife, to live together for better or for worse (so long as you are spared) before God and these two witnesses ? " John Bell answered, " I do." A similar question was put to the bride, and the ceremony proceeded. " You have acknowledged yourselves to be man and wife, joined together as one. Whom God joins together let no man put asunder. You have this day declared yourselves in the presence of God and these two witnesses to be man and wife according to the laws of Scotland." The ring was placed on the girl's finger, the fees paid, and a certificate given that the parties were married, " after the manner of the laws of the Church of England and agreeably to the laws of Scotland." There was just a little irregularity ; the certificate was, at Bell's request, for reasons which we can readily guess, antedated four years. Subsequently he plucked up courage to endeavour to have the marriage set aside, on the ground that it was never intended to be anything else but a sham in order to blind enquiries. Unfortunately for him, the Court came

#### GRETNNA WITH THE GILT OFF

to the conclusion that, as it takes two to be married, so in this case, as the woman believed she was being married, it took two to get out of it ; and John Bell took nothing by his motion.

There is no reason why people should not go, if they like, to Gretna or anywhere else in Scotland to be married to-day, and it is my experience that from time to time they do. And the threat of it may sometimes be of service to combat the prejudices of parent or guardian. But if the threat is carried into execution, unless Lord Brougham's Act is borne in mind, the journey will end in disaster. The residence in Scotland is not reckoned in the same way as it would be in England, and there is a sad little tale to tell even about that. A couple went together from London to Edinburgh, stayed in Scotland for twenty-one days, English time, and married. They entered that "foreign country" at four a.m. on 1st July, and they married at eleven a.m. on twenty-first July. Afterwards one of them regretted the marriage and took proceedings in England to set it aside. The judge held that the time must be reckoned from midnight to midnight, and that they had been nineteen days and two half days in Scotland by the law of that country. The error in calculation was fatal, and the marriage was declared null and void.

The railway and the residence have between them destroyed all the glamour of the dash to the North.



**VI**

**THE COUNTESS OF STAIR**



## VI

### THE COUNTESS OF STAIR

THE STORY about to be told forms the subject of one of the judgments of the great Lord Stowell. His own history was not without romance, for his brother's marriage was by way of elopement, and he himself married a lady whose acquaintance he made when he was trying her son at the Old Bailey for manning his yacht with sailors enticed from the navy. He sentenced the son and married the mother. As judge of the Consistory Court of London, a court which is still in existence though sadly shorn of its ancient dignities, he had before him all that class of business which now belongs to the Probate and Divorce Division, and none of his cases has added more lustre to his reputation than Dalrymple *versus* Dalrymple.

For a hundred and fifty years after the horrors of the Valley of Glencoe it was whispered that a curse hung over the family of Stair. The Master who planned the Massacre and his six successors in the earldom all died childless. The curse, and curse there well might be, fell with peculiar appropriateness on the John Dalrymple who became eventually the seventh earl. He was the son of General Dalrymple, and in 1804, being

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then nineteen years of age and a cornet of dragoons, he was quartered in Edinburgh with his regiment. There he became acquainted with Charles Gordon of Clunie, a gentleman of lineage, who had a seat at Braid and a town-house in St. Andrew's Square, and he fell in love with the laird's daughter, Johanna. A match which carried with it no advancement in fortune or in influence was not the sort of matrimonial alliance he was expected to contract. He was most insistent that his father and family must learn nothing of it, and he induced the lady to promise that only the "most dire necessity" should compel her to reveal their secret even to her own people.

They married after the Scotch fashion by mutual pledges in writing, and Johanna preserved the promises, her marriage-lines as she called them, in an envelope bearing the inscription, "Sacred Promises and Engagements." There were various documents inside, all of a somewhat similar nature. One of them ran : "I hereby declare Johanna Gordon is my lawful wife ; and I hereby acknowledge John Dalrymple as my lawful husband." Another paper reiterated the declaration of marriage by the cornet, with a promise that he would acknowledge her as his lawful wife when he had it in his power, to which she had added the undertaking on her part that nothing less than a desperate situation would ever open her lips. The first of these documents, which was signed by both of them, was sufficient by the law of Scotland to constitute a consensual marriage, without the intervention of a priest or any of the formalities

required by the law of England if the marriage had taken place in this country, and despite the fact of the minority of one of the parties to it. As it occurred in Scotland, the English courts would recognize it as a valid marriage.

When Charles Gordon left the capital and went to his country-seat, Johanna, pleading indisposition, remained in Edinburgh, and for a brief season the lovers indulged in stolen meetings and such kind of honeymoon as was compatible with secrecy. But marriage, like murder, will sometimes out. He wrote to her : " I have received several letters from town, all of which say that Lord Stair has heard the report of our marriage. Good God ! how hard is my fate that for the malice of such a set of people I should run the hazard of being disinherited. Therefore, contradict it in every company, as my sole hope depends on him, and such a report would infallibly ruin me, which I know would hurt you, as I know you love me." It is probably true that some rumours had reached the general, for when the cornet had been four months in Edinburgh his father brought him back to England. At first, he wrote to Johanna sometimes twice in a day, professing the most devoted passion and unalterable fidelity. Then he was despatched to Malta on active service.

Absence was now having an effect on John Dalrymple, and before leaving England he confided to one Hawkins, a friend of his family, that he had entangled himself in Edinburgh, and he misrepresented his relations with Johanna most shamefully. He asked him to intercept her letters and said that he would be glad to be done with her.

To her also he wrote cautioning her against giving credence to any reports which might be circulated about him during his absence, for if she did, they would make her eternally miserable. "I shall not explain," he continued, "to what I am alluding, but I know things have been said, and the moment I am gone will be repeated, which have no foundation whatever and are only meant for the ruin of us both : once more, therefore, I entreat you, if you value your peace or happiness, believe no report about me whatever. God bless you, ever dearest Love." So far as appears, this was the last letter, and during the three years he was away all that Johanna heard of him was that he was seeking some alliance more suitable to his rank. It was the gossip that he had ordered a new carriage on his marriage with a nobleman's daughter, and that his and her arms were actually quartered on the carriage. His wife remained silent, hoping against hope. But a heavier blow fell upon her. She learned that her secret had leaked out to the Duchess of Gordon through the carelessness of Hawkins, and, alas ! that he had given a wrong colour to it. Then she wrote to Hawkins direct, and a poor pathetic letter it was :—" As I am used extremely ill by him, I shall show the world who has been to blame. A maintenance he is obliged to allow us, whether he live with me or not. Few would have borne this treatment so long, and if the secret had not been divulged through you, I do not believe I would ever have divulged it, for fear of involving others." She went to see Hawkins and produced to him her "marriage lines."

## THE COUNTESS OF STAIR

Next year the young man came home, and Hawkins told him it was his duty to acknowledge her openly. He showed his sense of honour by obtaining dishonest possession of what he believed to be the most important letters that his wife held, and, under the impression that now he really had got rid of her, a day or so later he married Laura Manners by special licence at St. George's, Hanover Square.

The English gentlewoman was a sister of the Duchess of St. Alban's, her mother presently became Countess Dysart, and herself the Lady Laura Marjoribanks. In position and fortune she was far above the Scotch lassie, but not in pride. Miss Gordon instantly instituted proceedings for restitution of conjugal rights. She was met with all possible resistance. The amour was admitted, the marriage was denied. It was imputed against her that she was "an acute and active female who, with a knowledge of her country which Mr. Dalrymple did not possess, was endeavouring by hook or by crook to engage him in a marriage," and that she compelled him to execute the writings by menaces and terror. It was contended further that her long delay, which had permitted the honour of so great a lady to become involved, must put her out of court.

She replied that she could not have commenced the suit before the defendant came within the jurisdiction, or before he had cast her off. She was compelled to vindicate her own character or to suffer an injury even greater than that which was sustained by Miss Manners. In any event one of them was ruined beyond

## MARRIAGE A LA MODE

repair, but, were it herself, she must become an outcast with none to pity her.

Every Scotch lawyer of repute was brought into the case, which went on for three years, and it was not until 1811 that Lord Stowell delivered a judgment more than eighty pages long in favour of the Scotch and against the English marriage, and ordered John Dalrymple to receive Johanna Gordon as his wife. "She did all she could under the obligation of secrecy which he had imposed upon her by entering her private protest against his forming any new connection. She appears to me to have satisfied the whole demands of that duty which such circumstances imposed upon her ; and I must say, that if an innocent lady has been betrayed into a marriage which conveys to her neither the character nor the rights of a wife, I cannot, upon any evidence which has been produced, think that the conduct of Miss Gordon is chargeable, either legally or morally, with having contributed to so disastrous an event."

The defendant appealed, and Miss Manners also, under the style of Laura Dalrymple, wife of John Dalrymple, obtained leave to intervene in the proceedings. Eventually the decision of Lord Stowell was confirmed in the Court of Delegates.

It was a pitiful victory. The defendant might have been prosecuted for the bigamy, but he was not. Whether the parties in fact ever came together again does not appear, but in 1820, the year before the gentleman came into his earldom, there was a divorce. Miss

#### THE COUNTESS OF STAIR

Gordon's ill-luck has pursued her from that time to this, for the record in Cokayne's Peerage stands to-day that the divorce was occasioned by her own misconduct. But Riddell, in his reference to the seventh earl, says, "the above nobleman, anterior to his succession, was found to be lawfully married to Miss Johanna Gordon, by which lady, who still lives, and subsequently divorced him, he had no issue." Riddell was writing in 1842. One would conjecture that Cokayne is in error, and that, as between John and Johanna, the former was more likely to lapse from virtue than the latter. This seems to be borne out by a newspaper report which will be mentioned presently.

The divorce was presumably in Scotland, and it would imply a dissolution of the union (Scotland being centuries ahead of England in this matter), but none of the figures in this sad story ever adventured another marriage. The earl's innocent victim, Lady Laura Marjoribanks, lived till she was fifty four, and died in 1834. He himself, for the last eleven years confined to his bed, speechless, and almost unconscious, died in his hotel in Paris in 1840.

The rest of the history of the unhappy Johanna can only be gleaned from a notice which appeared on 25th January, 1847, in the *Liverpool Albion*, and was reproduced in *The Times* on the 27th January. "Mr. Dalrymple, who was cohabiting with a foreign lady, having determined on a separation, took the following extraordinary step. He requested a certain gentleman to pay attentions to Mrs. Dalrymple, and, if possible,

win her affections, so that he might be in a condition to sue for a divorce.

In the event of success, Mr. Dalrymple bound himself to pay the gentleman a large sum of money. The gentleman succeeded in gaining the affections of Mrs. Dalrymple, but she, instead of yielding so far as to give her husband the desired opportunity, herself sued for a divorce, on the ground of adultery, and obtained it. The gentleman who had promised to marry her now refused to perform that promise, which had such an effect upon the mind of the lady that she presently lost her senses, and has ever since been confined in a lunatic asylum. She is now seventy-five years of age, and it is stated that she has entirely recovered the use of her reason. A petition was brought before the Lord Chancellor on Friday to supersede the commission, which was issued in 1820. Several medical gentlemen testified that she was entirely restored to reason. The Lord Chancellor decided that the petition should stand over, and that Lady Stair should appear before the Master by her solicitor."

Her release came too late. She died at Edinburgh on the 16th February, "calling herself still," as Cokayne elects to put it, "the Countess Dowager of Stair," and was buried in St. Cuthbert's churchyard there.

Consensual marriages are still recognized by the law of Scotland, and there is nothing to prevent Miss Gordon's case repeating itself. The legislature has placed some check upon them as regards persons living south of the Tweed by requiring a preliminary residence by one of

#### THE COUNTESS OF STAIR

the parties for twenty-one days on the other side of the Border, but the Scottish people have declined to entertain any proposals for their suppression or regulation, although it would be hard to find another part of Europe in which marriages can be had without any formality. They say that men like John Dalrymple are few and far between, and there are none of them in Scotland.





(After the painting by Sir Joshua Reynolds)

(Facing page 80)

*Elizabeth Chudleigh (Duchess of Kingston)*  
*(See Chapter VIII)*



**VII**

**GENTLE BLOOD**

**F**



## VII

### GENTLE BLOOD

MARIA THERESA LONGWORTH was the daughter of a silk manufacturer at Manchester, and was educated in a French convent. When she was about twenty she made Major Yelverton's acquaintance casually on the boat crossing from Boulogne, and they used to write to each other occasionally afterwards. During the Crimean War she went to Galata to help in the hospitals, and they met again, and the acquaintance ripened into affection. She had some hundreds a year of her own, was fascinating rather than lovely, clever, romantic, decidedly unconventional, and moved in good society ; he had only debts, apart from an allowance from his uncle, but he was heir to an Irish peerage. In 1857 the Major was quartered with his regiment in Edinburgh, and Miss Longworth and a friend of hers (a lady who subsequently became a Sister of Mercy) went into lodgings there in order to be near him. They were practically on the footing of an engaged couple, and on Easter Day, so her story runs, the two of them read the Marriage Service together in her lodgings, and became husband and wife by the law of Scotland. He was most anxious to conceal the marriage from his uncle, for that gentleman always

#### MARRIAGE A LA MODE

expected his own son would become Viscount Avonmore eventually, and would certainly stop his allowance to the Major. So there were no witnesses and no one was told. Theresa herself was not at all happy about the ceremony, legal though it might be, for she was a Roman Catholic, and held marriage to be a sacrament. She insisted therefore that before they came together their union must be blessed by a priest.

Soon after this Major Yelverton went to Ireland, and they agreed to get married there in an orthodox way. She joined him at Waterford ; he bought a wedding ring and gave it to her, and the necessary arrangements were made. There was some delay while a dispensation was being procured from publishing the banns, and for a fortnight the pair went from hotel to hotel, travelling to all appearance as if they were already married. Eventually they reached Rostrevor, and there in August they were married by Father Mooney according to the rites of the Roman Catholic Church, but at their request no entry of the marriage was made in his register. After that they lived together as man and wife, the Major inscribed her name as his wife in hotel books, obtained a passport for her as his wife, and her relatives were informed that they were secretly married. He spent his leave with her and then rejoined his regiment. He returned from time to time when he could, and they travelled from place to place. His letters to her were, of course, addressed to Miss Longworth. This went on for about a year, when she was taken ill at Bordeaux and he had to go back to Edinburgh. “ Dearest small

Tooi-tooi," he wrote to her, "you must get well and strong. I am very miserable at leaving you, especially in such a weak state. I began to cry again when in the railway." When she recovered she came to Edinburgh too, and then he said he was greatly afraid that their secret would be discovered, and urged her to go to New Zealand, where he would join her as soon as he could. He succeeded in getting her out of the town, and the next day, 25th June, 1858, he wrote an affectionate letter to "poor little Tooi-tooi" in the morning, and in the afternoon married the widow of a Scotch professor. The professor, unlike the ordinary run of professors, had made a considerable fortune, and the widow was a wealthy woman. But she was also a very incautious one, although she was forty and had two children, for very little enquiry would have told her that the Major was at all events understood to be privately engaged to Theresa.

It is only possible to give the barest summary of the amazing litigation which followed, lasting for full ten years. The moment Theresa heard what he had done she took proceedings for bigamy. These came to nothing, as there was no entry of the Irish marriage in Father Mooney's register, but only the marriage certificate he had given her. In August she filed a suit in Edinburgh for declaration of marriage, whereupon the Major put in a counter-petition that she should be put to silence. Not content with the extremely tardy procedure which obtained in Scotland, she brought a similar action in England, but the Major defeated that by pleading he was domiciled in Ireland and the English court had no

jurisdiction over him. Then her brother-in-law forced him into court by suing him in Ireland for board, lodging and necessaries supplied to his wife Theresa. And now the gallant Major came out in his true colours. The case was heard in Dublin before the Chief Justice and a special jury, and the callous cynicism of his evidence drove the city mad. He declared there had been intimacy between them for years, and he never contemplated marriage. He never loved her purely and honourably, from first to last his sole aim was to make her his "mistress in law." Seduction was generally laudable if it was not found out ; it was not laudable to seduce a gentlewoman, because she would lose her position, but he did not consider the daughter of a silk merchant to be of gentle blood ! The Edinburgh marriage was a myth, and the Irish one was only to appease her conscience, and, as he was a member of the Church of England, no marriage at all !

He did not know that within a few years two members of his noble family would die of drink and destitution : one in a cellar, the other in the gutter in the snow, after numerous convictions by the magistrates for drunkenness.

On the eleventh day Theresa was summoned to hear the verdict. She fell on her knees with her hands clasped before her ; the people sat in painful silence. "How say you, gentlemen, do you find there was a legal Scotch marriage ?" "We do, my lord." "Do you find there was a legal Irish marriage ?" "Yes, my lord." "Then you find Major Yelverton was a Catholic on the latter occasion ?" "Yes, my lord." And then followed a

scene unparalleled in the annals of justice. The barristers tore off their wigs and waved them, and the court rang without restraint with cheers for the judge, and cheers for the counsel and the jury. The generous crowd took the horses out of her carriage and drew her to her hotel in triumph.

She was compelled to speak to them from the balcony : “ You will live in my heart for ever, as I have lived in yours this day. I am too weak to say all that my heart desires, but you will accept the gratitude of a heart that was made sad, and is now more glad. For ever I belong heart and soul to the people of Dublin.” The Dublin newspapers reported the trial at such length that one of them had no room for the leading article, and another left out the advertisements. The Major was placed on half pay.

It was distinctly an Irish verdict. A marriage between persons who are married already can only be a nullity. If the Irish marriage was valid, the Scotch one must be void ; if the Scotch marriage was valid, the Irish one must be void. The Major appealed, but the verdict stood. However, he was unfortunately right in his law with regard to the ceremony at Rostrevor. The troubles of Ireland are reflected in her marriage laws to this day, but formerly they were terrible. A Presbyterian clergyman could only marry Presbyterians, and a non-Presbyterian married by him could marry another woman without committing bigamy ; a Roman Catholic priest could not marry one of his own faith to any person who had been a Protestant within the year previous. When

#### MARRIAGE A LA MODE

Yelverton was being married the priest asked him : " Are you a Catholic ? " He answered : " I am not much of anything ; I am not a Roman Catholic ; I am a Protestant Catholic." The fact was that he was nominally a member of the Church of England, and the Irish marriage was void by the statute of George II.

At the same time no one can believe, to quote Theresa herself, " that two persons, deeply attached to each other, met in a church, knelt down at the altar, whilst the officiating minister performed the marriage service— for the express and absolute purpose of *NOT* becoming husband and wife."

The lawyers were already wagging their heads, and little straws began to show the way the wind was blowing. One of the English law journals, while concurring entirely with the verdict, subject to the legal assumptions on which it rested, called Theresa unscrupulous, a prey to her passions, intent to compass her end without a technical sacrifice of chastity, but careless how she strayed upon its utmost verge.

She returned to Scotland, and at last the Edinburgh case came on. But the Scotch court was as little like the other as the atmosphere of Edinburgh resembled that of Dublin. There was no jury, and, worse than that, neither Theresa nor the Major could go into the witness box, as the law in those days did not permit evidence to be given by the actual parties in such an action, because it was believed that interested persons never told the truth. The judge of the First Division of the Court of Session decided against her ; the judges in the Second Division

decided in her favour by two to one. The Major went to the House of Lords, and there the case occupied thirteen days. Lord Westbury and Lord Brougham held that by the law of Scotland the parties were man and wife ; the other three Lords took the contrary view. The case was lost, and it was sent back to Edinburgh for the Court of Session to draw up its judgment. In vain Theresa appealed to the Scotch judges to let her prove an alleged admission by the Major to his dying brother that she was his wife. The court, refusing her crave and executing the remit (as the jargon went), informed her that proof had been concluded, circumduction had taken place, and judgment had been pronounced. She demanded that the case should be referred to the oath of the Major, in accordance with an archaic peculiarity of the Scotch law ; they told her this would involve the status of the second lady who was not a party, possibly also a confession of bigamy, and it would not be right to allow it. She appealed a second time to the House of Lords. This time she appeared in person, probably because her money was all gone ; indeed, a public subscription had been raised for her in Manchester, and she was supporting herself by her pen. The attempt was hopeless. She came back to Edinburgh yet again—it was then 1868—and asked an unsympathetic tribunal to set aside all the proceedings from first to last on the ground that, as Yelverton was a domiciled Irishman, the Scotch court never had any right to entertain them.

She could do nothing further to defend her honour, and she went out and became a wanderer on the face of the

earth, earning a livelihood by writing novels and other works under the name of Theresa Longworth (Viscountess Avonmore). One of her books is called "Teresa Peregrina, or Fifty Thousand Miles of Travel." When she died at Pietermaritzburg in 1881, she "seemed glad to leave this world."

The world might well have been kinder to her. The Irish ceremony was undoubtedly a marriage in the eyes of three-quarters of Europe, and in this she was the victim of an atrocious law. Her letters, which she did not shrink from publishing, "believing that the purer the mind of the reader the less evil would be found in them," displayed a warmth of expression which was distasteful to a censorious age, but even the Scotch judges came to the conclusion that Yelverton was unworthy of belief, and if she had not insisted upon the innocent character of her relations with him between Waterford and Rostrevor, she might have established the Scotch marriage. Everybody thought from the evidence that during that period they must have lived together, and she could really have admitted it under the circumstances without destroying her case. She would not; and it was that, more than anything else, which proved fatal to her. But if six judges condemned her, six judges found in her favour, and the only time she was able to submit herself to a jury, she was gloriously vindicated.

# VIII

## JACTITATION



## VIII

### JACTITATION

CARDINAL WISEMAN was once asked if he knew what a suit for jactitation was, and he said that he did not. It used to be well-known in Doctors' Commons, but the present generation has hardly heard of it. In form an action for defamation, its object usually was to obtain what was supposed to amount to a decree of nullity of marriage, and it flourished until the futility of the proceeding was exposed upon the trial for bigamy of Elizabeth Chudleigh, Duchess of Kingston, most famous of the professional beauties of the eighteenth century.

Daughter of a lieutenant-governor of Chelsea Hospital from whom she inherited little, dependent on the stipend she received as maid of honour to the Princess of Wales, Elizabeth Chudleigh's chief assets were her notable beauty, ambition, and force of character. Sir Joshua Reynolds, who painted her, said he never saw a beauty so delicate. When she was eighteen, or possibly rather older, she was privately married to Augustus John Hervey, a midshipman about seventeen years of age, grandson of the Earl of Bristol. They had nothing to live upon, he was afraid of his family, and she could not afford to lose her place about the Court. The

ceremony was carefully stage-managed at the parish church of Lainston, near Winchester. It was a parish of one hundred and twenty acres, one of the smallest in England ; her cousin resided in the only house in it, the church stood at the end of his garden, and the rector's income was fifteen pounds a year. At eleven o'clock on the night of the 4th of August, 1744, the two young people strolled into the garden, the witnesses slipped out after them, and the rector was waiting at the church. A wax taper stuck in the crown of a gentleman's hat gave all the light they had. The lady said afterwards it was such a scrambling, shabby business and so much incomplete, that she should have been full as unwilling to take a positive oath that she was married as that she was not. Such as it was, however, it was before Lord Hardwicke's Act, and it was as good as Miss Gunning's marriage a few years later. No record was made of it then, the proof being left to the recollection of those who were there. Two or three days were spent together ; the young man returned to his ship, Miss Chudleigh to her duties.

They met again in secret from time to time when the sailor came ashore, and there was a child of the marriage, christened at old Chelsea Church. Miss Chudleigh told Lord Chesterfield the report went that she had had twins, and he answered her that he had always made a point of only believing one half of what he was told. It was a trying life for a woman who was supposed to be a spinster, and soon the pair drifted absolutely apart. The husband was not a pleasant

person, and it is said she married him because she was led to believe that the Duke of Hamilton, the only man she ever really loved, had thrown her over. She presently discovered she might have married the duke after all, or many another noble lord, and then she plunged recklessly into the dissipations of the period, gleaning where she could, and enjoying the pleasures of life to the full. The King of Prussia declared that she drank two bottles of wine and stumbled in the dance ; the King of England kissed her in public ; it was common talk she was a duke's mistress, and ever in the back-ground was the rumour that she was Hervey's wife. There was a subscription-dance at Ranelagh, honoured by the presence of Royalty, and when Elizabeth appeared as Iphigenia before the sacrifice, the other maids of honour declined to speak to her, and it seems the Princess lent her a cloak. There is plenty of evidence about this episode, but a scurrilous Grub-street hack, writing in days when it was safe to say anything to her discredit, made the most of it. "At a midnight assembly," he says, "when Bacchus revelled, and the altars of Venus were encircled by the votaries of Love, she appeared almost in the unadorned simplicity of primitive nature." She made enemies, and it is hard to distinguish the truth from the falsehood. The story goes that she went to Lainston with a friend ostensibly to look at the little church, and while the clerk was entertained with conversation outside, she was busy in the vestry cutting out the tell-tale page about her marriage from the register. A recent writer observes that it is a curious tale, but it

has the merit of being true. It looks really much more like malicious invention, for if Lainston boasted of a clerk, it does not appear it ever had a register until she provided one.

In 1759 the ill-health of Lord Bristol opened the prospect of a rich succession and an earldom, and she took steps to have the ceremony of twelve years earlier duly recorded. It was only just in time, for the rector had taken to his bed, and died six weeks after she came with her cousin to see him. They bought a register book in Winchester, and in it the rector made two entries, one of a death there, and the other of the marriage. It might be a hundred thousand pounds in the poor parson's pocket, she said.

The earl disappointed her by an unconscionable recovery. Nine more years passed away, but not the earl. She turned her thoughts in another direction. If only the marriage were non-existent, the Duke of Kingston was ready to make her his Duchess. Augustus, who had hopes of a more agreeable connection elsewhere, proposed a divorce, that is, a separation, followed by an Act of Parliament to cut the knot effectually. Elizabeth preferred the more polished procedure of a jactitation suit, which he should be content to lose as a gentleman of breeding and quality.

Doctors' Commons set to work and evolved a rigmarole suited to the business, couched in the occult language of the craft.

The proctor for Miss Chudleigh filed a libel in the Consistory Court, wherein he said, alleged, and in law

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articulately propounded that the right honourable Augustus John Hervey falsely and maliciously boasted he was married to her, to the great danger of his soul's health, no small prejudice to the said Elizabeth, and to the pernicious example of others, and this was and is true, public and notorious ; and the party proponent prayed right and justice, and that the said Elizabeth might be pronounced, decreed and declared a spinster, and the said Augustus be enjoined perpetual silence, and obliged and compelled to cease, desist and abstain from such his false and malicious boastings in the future.

Whereto the proctor for the said right honourable Augustus did say, allege and in law articulately propound that the said Augustus on or about the 4th day of August, 1744, at the house of Mr. Merrill, at Lainston in the parish of Sparshott, was joined to her in holy matrimony about eleven o'clock at night, by the Rev. Thomas Amis, since deceased, the marriage being kept a secret, and differences having thereafter arisen between them which caused them to live separate and apart.

Elizabeth replied with proof that she had always passed as a spinster, and took her oath that the other tale was untrue. In fact, it was artistically inaccurate, and she swore by the card. The marriage register could have been produced, and evidence was available which was never utilised ; the witnesses for the defence were carefully selected with the object of losing the case, not one of them being cross-examined, " even in the imperfect and wretched manner in which cross-examination was conducted upon paper and in those courts."

The anticipated result followed. By sentence read, promulgated and given in the dining-room adjoining to the common hall of Doctors' Commons, "In the name of God, Amen," the judge pronounced that the said Elizabeth Chudleigh, "was and now is a spinster free from all matrimonial contracts or espousals (as far as to us as yet appears), more especially with the said Augustus John Hervey," and decreed and imposed perpetual silence upon Augustus aforesaid, admonishing him to desist from his boasting.

It is easy to say that dry lucre was the whole inducement, cold fraud the only means to perpetrate that crime ; that she was perfectly indifferent what husband she adhered to, so that the profit to be drawn was tolerably equal. It must not be overlooked that she had lived a wretched, loveless life for the past twenty-five years. The sentence was given in February, 1769, and in March, relying on the assurances of Dr. Collier and the rest of the advocates employed, she married the Duke at St. George's, Hanover Square, upon a special licence procured by Dr. Collier himself from the Archbishop of Canterbury. "Do you not think it very kind in his grace," she said, "to marry an old maid ?" Walpole wrote to Sir Horace Mann about it—"there is no more doubt about the marriage of Mr. Hervey and Miss Chudleigh than that of your father and mother !" But it is certain that when she obtained her decree, she honestly believed she was on the windy side of the law and entitled to marry again. Hervey believed the same, or he would not have spent his money on the lawyers.

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When, at a later date, the Duchess was on her trial for bigamy the hollow farce was scathingly condemned. "This injunction of perpetual silence," exclaimed the Attorney-General, "continues no longer than till the party chooses to talk again, and the person to whom he may with the most perfect safety repeat his assertions is the judge who enjoined him silence; for it is agreed on all hands that the party may at any time inform the court, that though it did not appear formerly that he was married, he can make it appear now. It is a suit which has no termination. You may reverse the sentence to-morrow, that the next day, and a third after that, and the suit is in its nature eternal. An ingenious person among the bystanders has calculated how many wives a man that had a taste for polygamy might marry with impunity, and I think he made out, according to the probable duration of such a suit, that a man between twenty-eight and thirty-five might with good industry marry seventy-five wives by sentences of the Ecclesiastical Courts, each sentence standing good till reversed."

When Hervey attended the wedding at St. George's he said he came there to have a look at his widow. Five years afterwards she lost another husband, for the Duke died. He left her extremely wealthy, and Walpole declared she was carefully described in his will as "my dearest wife, Elizabeth, Duchess of Kingston, *alias* Elizabeth Chudleigh, *alias* Elizabeth Hervey"—precisely in the way they described a street-walker in an indictment at the Old Bailey. Walpole was not telling the truth when he

said this, but it shows the way the wind was beginning to blow.

Something akin to the Old Bailey was in store for her. She went off to Rome, and was staying there as the guest of the Pope when the news arrived that there really was an indictment. The late Duke's relatives had got into touch with her old servant and ascertained the facts. They calculated that the Duchess would not dare to return, and would be outlawed accordingly. They did not know Elizabeth Chudleigh ! She had thousands of pounds to her credit, and the Italian banker refused to let her have any of it. She showed him a pair of pistols and forced him to put her in funds. To England she came, prepared to take her trial. She knew she was in no personal danger, for the Lord Chief Justice, Lord Mansfield, was her friend, and he stood up in the House of Lords and demanded what would be the practical result of trying a peeress ; no punishment could follow on conviction, but only this—"The lady makes your lordships a courtesy, and you return her a bow !" She was a peeress in any case, for the Earl was dead at last, and if she was not the Duchess of Kingston she was the Countess of Bristol.

Her case was the most exquisite sensation society had enjoyed for many a year. A young Italian nobleman travelled to England expressly to see a British peeress hanged. Even Hannah More was there with the ticket of invitation issued to David Garrick. This is what that worthy woman thought about it :—"The fair virgin had four virgins in white, behind the bar.

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The Duchess has but small remains of that beauty of which kings and princes were once so much enamoured. She is large and ill-shaped. There is nothing white but her face, and had it not been for that, she would have looked like a bale of bombazeen. There was a great deal of ceremony, a great deal of splendour, and a great deal of nonsense. They adjourned upon the most foolish pretences imaginable, and did *nothing* with such an air of business as was truly ridiculous."

Elizabeth Chudleigh was tried in the Court of the Lord High Steward, but something else was to be determined more important than the fate of the Duchess—the absurd claim put forward by the civilians of Doctors' Commons. Doctor after doctor from the dining-room addressed the court for weary days, and Scaccia and Cavarruvias, Vulteius and Sanchez, with a host of other equally musty authorities, were paraded before the puzzled peers of the realm. They maintained that the judgment of the court Christian could only be impeached in a similar tribunal, and was conclusive so long as it stood, right or wrong, collusion or no collusion. They declared the criminal law applied to the poor, not to those who could afford to carry their matrimonial tangles to Doctors' Commons. Dr. Collier, suffering from a variety of complaints, particularly a "St. Anthony's fire in his head and face by which one side of it was so much swelled that his eye was almost closed up," was conspicuous by absence.

The judges of England were present to assist the House, and their considered opinion being that sentence

in a jactitation suit was not binding on the Crown, and its effect would in any case be taken away upon proof of fraud or collusion, Doctors' Commons was defeated, and the trial went on. The proper witnesses were called, the register was there, and the prosecution made out their case. But its serio-comic character persisted from first to last. Lord Barrington protested he could not reveal statements committed to him in confidence, and the House deliberated on the point of honour until Lord Camden lost all patience. "Is it dignified," he asked, "to discuss etiquette when lives and liberties are at stake?" There was practically nothing in Lord Barrington's evidence, but so much about his honour that the clerk of the House grew tired of taking it down, and his lordship gave up in disgust.

"Guilty, on my honour," was the verdict of every peer save one : the Duke of Newcastle said, "Guilty erroneously, but not intentionally, upon my honour."

The inevitable crowning absurdity was reached when the prisoner demanded benefit of peerage according to the statutes. The Attorney-General agreed that benefit of clergy extended to a peer, even although he might not be able to read, and that he was also excused from the penalty of branding on the brawn of the left thumb ; but a woman, though she might escape death by demanding benefit of clergy, must be burnt in the hand by the gaoler in open court, and this even if she were a peeress, for she was not a Lord of Parliament. The judges deliberated solemnly on this, and then gave their opinion that she was entitled to her immediate

discharge. "Madam," said the Lord High Steward, addressing the prisoner, "although very little punishment, or none, can now be inflicted on you, the feelings of your own conscience will supply that defect. And let me give you this information, that you can never have the like benefit a second time, but another offence of the same kind will be capital ! "

The ducal family promptly applied for a writ *ne exeat regno* to prevent her leaving the country, but the Duchess was equally prompt. She issued invitations for a dinner to be given the next day, and caused her carriage to be driven through the streets : meanwhile she was crossing the Channel in an open boat.

The late Duke's will stood as firm as the Rock of Gibraltar, and she continued in enjoyment of his revenues, residing at Calais, Rome, St. Petersburg, Paris, never in one place for long, and never relinquishing the title of Duchess.

Everyone could say what they liked about her, and scandal-mongers pointed out she was only a little on the wrong side of fifty, and that Ninon de l'Enclos, who bloomed at threescore and captivated at seventy, afforded an example which every amorous grandmother might have in view. It is true that she retained her powers of fascination long after her beauty had left her, but the adventures ascribed to her must be taken with salt, for they bear every mark of spiteful exaggeration. She had a knack of mixing with strange people. Prince Radzivil of Poland, who was not far removed from being a lunatic, entertained her at a sort of Brock's fireworks

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display, and after escorting her through a village of forty houses erected in her honour, filled with rich merchandize which he bestowed upon her as they went, set the whole thing afire as the final set-piece. Worta, the pretended Prince of Albania, made love to her and borrowed her money, until he was discovered to be a humbug of the first water, and went to prison for forgery.

We read also of acts of careless generosity ; and the will she left behind her indicates that she was capable of charity, for it contains a legacy of fifteen thousand pounds to her most persistent enemy. She lived in a century as coarse as it was courteous, when decency was hard put to it to make a living, and independence was unpardonable in a woman. Her vices were eagerly recorded, her virtues interred with her. The nice conduct of a clouded history demands the intuition of a genius, and it remained for Thackeray to suggest, in Beatrix and the Baroness Bernstein, a little more kindly view of her singular character. She died in Paris the year before the Revolution which destroyed the world to which she belonged.

# **IX**

## **WARDS IN CHANCERY**



## IX

### WARDS IN CHANCERY

PROBABLY ITS own officials have hardly ever heard of the Court of Orphans, and yet, if a man presume to marry its orphan without the consent of that court, perchance it may punish him with fine and imprisonment. Once upon a time there was a misguided youth who not only declined to pay the fine, but challenged the right of the court to make him. He asked how it could be right to enforce such a custom outside the City, seeing that in the country it was impossible to tell one orphan from another or to know the custom of the City? He was answered that it must be so, otherwise one could "draw a City orphan to Islington and marry her there; and everyone ought to take notice whom he marries, and he might have been informed by the orphan herself, though she were in the country; and, besides, no one was bound to give him notice."

He remained obdurate, and was sent to Newgate to think the thing out. It is manifest that anyone who happens to be courting a young lady whose father was a Freeman of the City of London ought to know about this case, and take all care that the Mayor's Court, London, does not get him into its clutches. For there

is still a prison of sorts at Newgate, and the jurisdiction, though rusty, is undoubted.

The ordinary run of people need only be warned to steer clear of Wards in Chancery. These unhappy young persons originate in divers ways which it were unprofitable to dwell upon. The one characteristic they all have in common is that they are possessed of money : "No money, no ward," ought to be the Chancery motto. The mere beginning of a suit in Chancery relative to infants or their estates turns them into Wards of Court, and the court will exercise control over their persons and property until they come of age, even though the father is alive or has appointed a guardian by his will.

Woe betide any man who approaches a Ward of Court without due circumspection, or dares to think of marrying one without the leave of the Lord Chancellor. He will be suspected of running after the money and dealt with accordingly. He ought to propose to the Chancellor first and the infant afterwards. The necessary form for the proposal can be obtained from any lawyer.

On occasion the Court of Chancery can be most unkind to those who interfere with its infants :—"Mr. Justice Mitchell this day by petition prayed to be discharged out of the custody of the Fleet, as a close prisoner within the walls thereof ; he was committed for being a principal contriver in marrying Miss Hughes, a Ward of this Court, a fortune of thirty thousand pounds, to a schoolmaster of Islington, one Science, by trade a watch-

maker . . . . the most flagrant contempt of the Court that ever appeared before it."

What the Court did to him was to prohibit him from ever practising again at the bar, and it struck him out of the commission of justices of the peace. "How very unequal are the laws of this land," thundered a Lord Chancellor, "making it felony to steal my horse, and not felony to inveigle and gain my daughter without my consent!" Quite recently the infant itself was locked up by way of punishment.

The worst of it is that this offence may be committed unawares. "If actual notice of the infant being a Ward of Court were necessary it would be an easy matter to put other people not really privy to the acts of the court to transact and bring about the marriage." Everybody connected with the business stands a chance of going to prison, clergyman and all. The clergyman, however, usually gets off with a lecture, and there was one case in which he was allowed to go, although the girl was only fourteen and it was plain for him to see that there must be something wrong with the licence, which described her as twenty-one years and upwards.

The correct thing appears to be to get out of the jurisdiction after the marriage as fast as possible, but the drawback is that the fortune remains with the Chancellor and the husband will have to support his wife himself, at all events until she comes of age. There was a young gentleman named Baseley who ran off with a lass of seventeen who resided in Durham and had a great fortune in coal-mines and the like. He married her at Gretna

and then in more leisurely fashion in a church at Edinburgh. From Scotland he despatched his petition to the Chancellor for forgiveness. He was informed that justice declined to have anything to do with him unless he returned to England, and as he was unable to help himself, to England he came. He was promptly clapped into the Rules of the Fleet and not allowed out again for three years, until his wife attained her majority. By that time they had had three children, and Lord Eldon relented and allowed her to pay his debts and settle five hundred pounds a year upon him, on the ground that there could not be much expectation of happiness when the husband had nothing and the wife had the whole control over the property.

Baseley fared much better than another young man about the same time, who was ordered to stand his trial for abduction and put in the pillory—"a punishment," the court was pleased to observe, "which to a gentleman will be more dreadful than transportation or death." Afterwards the property was so tied up that he could not touch a penny of it, subject to this, that if he redeemed his past by good behaviour in the present his wife might leave him something in her will.

The Courts in Ireland have occasionally shown singular tenderness towards these matrimonial scapegraces.

Annie Walker's money kept the lawyers busy there for many years. In the course of the litigation which arose out of it a recently called barrister, Thomas Hodgens, was asked to give a professional opinion. The thought struck him that here was the opportunity for

getting a fortune much sooner than he could make one at the bar. He went to the school in Dublin where the Ward of Court was being educated, and made acquaintance with her. It was easy for him to win her confidence, for she was only thirteen years old. Not too young to be married, however ! After he had called twice permission was given to take her for an evening walk, and he proceeded forthwith to the lodging of a degraded clergyman in the Straw Market. There he went through a form of marriage with her, and she was sent back to the school with strict injunctions to keep the important secret. It was too much to expect of any school-girl, and presently my Lord Chancellor heard all about it. The barrister, the clergyman, and the girl's mother were all put in prison for contempt of the court. Thereupon Hodgens swore the usual affidavit in such circumstances made and provided regarding the delicate state of his health, promising not to hold any further intercourse with the young woman without the leave of the Court, and he was released on bail in twenty thousand pounds.

The worth of his promise ought to have become sufficiently manifest when Annie was induced somehow to go and see him at his residence, and she was detained there till the next day. He was committed again, but he swore roundly she went of her own accord and without his knowledge, and he was let out on the same bail as before. Tranquillity reigned for a whole year after that, and then the climax came. The girls of the school were out for their daily promenade under the watchful

eye of the mistress. A carriage stood by the kerb ; Annie jumped into it ; the door was shut and she drove away. It was impossible to prevent her, for some men who appeared to be idling about got in the way of the poor mistress. Hodgens had got the girl again, and this time effectually. That night she was taken in disguise aboard the London lugger. Hodgens himself adopted elaborate precautions. A provision cask had a number of air-holes knocked in it, and he got inside. The cask was brought down to the ship on a dray with a number of others, and in this uncomfortable manner he came off shore. They proceeded to London, then to Rotterdam, and finally to Paris.

The couple had vanished without leaving a trace, and the Chancellor was helpless. The only thing he was able to do was to have the Grass Market marriage declared a nullity. It was probably easier to do that in Ireland than it would have been in England, but why it was not done two years earlier is a mystery. Annie, in Paris, heard not a word of it, and she went on believing she was legally married. She was fifteen when the elopement took place, and they remained abroad for six years. How they lived is uncertain. Hodgens had some money of his own, and they occupied a couple of rooms in obscure lodgings. She declared afterwards, that when he went out to enjoy himself he locked her up in one of the rooms, and she was constantly beaten and ill-treated and kept without necessary wearing apparel. She was never allowed out to a place of worship. There is nothing, of course, to corroborate her story,

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and possibly she exaggerated. Anyhow, when she came of age, he brought her back to Ireland. One would have thought that then the Courts would have done something to him, but apparently they decided to make the best of a bad bargain. He was willing to marry her again in a decent way. Her reputation had been so hopelessly compromised, and she had been living so long under his control, that she was equally willing. The only stipulation made was that the marriage settlement should be strictly drawn to exclude him from any interest under it. He agreed to this—in fact, he proposed it himself, knowing full well that it would not really prevent him from spending her money as fast as she got it. Justice professed itself satisfied, and he escaped the punishment he richly deserved. But a life of such agitation and excitement left its mark on a girl who ought to have been improving her mind and morals at school. She lived five years with him after the marriage and then eloped again. Hodgens obtained a verdict for seven thousand pounds against the man she ran away with, so that from start to finish he made money out of her.

“The jurisdiction which the court exercises in protecting Wards of Court is one of the most difficult, painful and disagreeable which a judge can possibly be called upon to put in force.” The judge who said that realized that the modern infant is fast becoming a most awkward person to manage. After a gallant captain had been in Holloway for six months in connection with one of these marriages, the Ward was ordered

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to execute a settlement from which her husband was completely cut out. She flatly refused to do it unless she was permitted to leave her property to him if they had no children. She was told that her husband would languish in gaol until she did, but she stuck to her guns, and won the victory. Another infant, this time a young man, was frightened into executing a settlement by the fear of losing his liberty. But he soon came of age and brought an action to set the settlement aside, and the Chancery lawyers were at last forced to admit that it is beyond the power of the Chancellor to make his Wards tie up their money as he thinks proper if they think to the contrary. He can punish for contempt, indict for conspiracy, bend the fortune hunter to his will, and put the marriage on a sound legal basis, but he cannot compel people to divest themselves of their own property, even though he be a Lord Chancellor.

**X**

**THE WEDDING OF MRS. SAMUEL BROWN**



## X

### THE WEDDING OF MRS. SAMUEL BROWN

THOUGH CONSENT does not make marriage in this country, there can be no marriage without it. The appearance of it is insufficient, consent must be real ; but the story I am about to relate concerning a girl who was too easily persuaded to marry a man she did not care for, and afterwards, though she had ample resources and the strongest support of those in authority, was bound to her bargain, should demonstrate better than any homily how hard it is to rebut the presumption in favour of matrimony.

Most people would have thought Esther Field a lucky girl to have over a thousand a year. She was thirteen when her father died, and her brother was younger. John Brown, farmer, brewer, and proprietor of the Harcourt Arms, at Pendley, near Tring, Hertfordshire, who had been engaged to an elder sister of hers who afterwards died, was one of the executors, and although strictly speaking he was not their guardian, he took charge of the children and saw to their education. Their father had been of about the same social standing as John Brown, but had made a considerable amount of money, so the boy went to Harrow, while the girl was sent to a school in Kensington, and after that to a lady

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in Penzance. In the holidays they used to return to the house in which Brown and his wife lived at Tring, and they looked upon it as their home. In April, 1847, Esther came back there preparatory to going to France to be finished. At that time a suit had been instituted in Chancery for the administration of the will and the appointment of a formal guardian, and so she was technically a Ward of Court, which meant that the Court exercised control over her person and property so long as she continued to be a minor.

Samuel, twin brother to John Brown, was living with him. Formerly he had been a butler in Wimpole Street, but now he looked after the inn and occasionally did a deal in horses.

On 19th June, at Trinity Church, Marylebone, Esther was married to Samuel Brown. She was just turned eighteen, and he was fifty-two. The marriage was by banns, the residence of both the parties appeared as Wimpole Street in the marriage register, and Esther was stated to be of full age.

Five days afterwards she went to Hemel Hempsted on a visit to the family of a solicitor named Smith, who acted for her father, and still acted for the executors. She was walking in the garden with his son Montague, when he said something of an affectionate nature which compelled her to tell him she was already married. He at once went to his father, and he drew her story out of her. She protested she had been intimidated into her marriage with Samuel and would never live with him. Mr. Smith placed the matter before the Vice-Chancellor,

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who promptly committed Samuel to the Queen's Prison for the contempt, and directed that criminal proceedings should be instituted against him for falsification of the register.

"I will not say of this case," observed the Vice-Chancellor, "that it is the most disgraceful of the class which has ever come under my observation, but I have certainly never seen a case which in its results may be more deplorable as regards the principal party concerned, nor one in which it would be more difficult to find a single extenuating circumstance in the conduct of the male actor in the unhappy transaction." He expressed a strong hope that steps would be taken to annul the marriage, and restore her property to the unfortunate victim.

In due course the prisoner was brought up at the Old Bailey to stand his trial there. The importance attached to the case was indicated by the attendance of the Attorney-General to conduct the prosecution, and the court was informed the proceedings were taken by the authority of the Vice-Chancellor and were preliminary to action elsewhere to set the marriage aside. It was the first instance of a prosecution for causing false particulars to be inserted in a marriage register. Samuel pleaded not guilty, but, of course, he was convicted, and after a remand to Newgate he was eventually sentenced to six months in the House of Correction, Coldbath Fields.

It was intended that Esther should have the privilege of a special Act of Parliament declaring the marriage

void, and a Bill for that purpose was read a first time in the middle of the following year. The procedure in such cases very much resembles what takes place in an ordinary trial. Sir Fitzroy Kelly appeared for the petitioner, Esther Field. He asserted that her marriage would have been annulled in Doctors' Commons on the ground of undue influence, if the rules of evidence had allowed of her being called as a witness there ; as they did not, it was necessary to come to Parliament for relief.

He drew a picture of the position of the parties. "Here she is at one side of the bar, an orphan, helpless, unprotected and unhappy, a young lady yet innocent and undefiled, with her affections previously bestowed upon another : he stands at the other side of the bar, old enough to be her grandfather, who has persecuted and oppressed her, and availed himself of the opportunities of a guardian to gratify his base desire to possess her fortune. Is a man like that to be permitted to compel cohabitation, enjoy her fortune, and reap the reward of his rapacity and fraud ?"

Esther and her witnesses were then called before the assembled peers, and this is the story they told.

She looked on Samuel practically in the light of a guardian, and when he suddenly sprung a proposal of marriage upon her just before the Epsom races in May, 1847, she laughed and told him she could not think of such a thing, for he was old enough to be her grandfather. He grew angry and threatened to do harm to himself, or that he would shoot himself. He frightened her so that she consented to marry him. Four days later

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she told him she was very unhappy, and did not like him, he was too old a man, and she could not keep her promise. He charged her with being fond of Montague Smith, and when she did not deny it, he threatened what he would do to him. A day or so after that he said he had intended to shoot himself the previous night, and showed her the letter he had written for his brother to read after he was dead. He worried and alarmed her till she gave way.

"Fear lest he should shoot himself tended to my consent," she said ; "I believed he would do harm to Mr. Montague Smith ; I do not think I should have promised if I had not believed that." He told her the marriage would take place the following morning by licence at St. George's, Hanover Square.

The night before the wedding she slept very little. It had been given out that Samuel was going to drive her to Chardelowes to see the gardens. She came down early and had breakfast with him, at least such breakfast as she had, and then went upstairs and saw John and his wife in their bedroom. Samuel brought the gig round and they drove to the railway station. On the way she told him again she could not marry him, and he said, "Nonsense, nonsense!" They reached London, and went to the house where the church clerk lived, stayed a few minutes, and then proceeded with the clerk's wife in a cab to Trinity Church and were married. She repeated the usual words after the minister : "I certainly gave my consent, though it was unwillingly given." After signing the registers they returned to the clerk's

house for cake and wine, visited two or three shops, and then carried through the advertised programme by going to Chardelowes. They got home about six o'clock, and John's wife was wondering why they were so late. Samuel said calmly, "We enjoyed the beautiful day walking about the gardens." Things went on as if nothing had happened. She was accustomed to share her room with a child of seven, and she continued to do so. She was excited, bewildered, unhappy, and when the opportunity offered of getting away from the house and going to Mr. Smith's, she was glad to take it. When she was there her nerves were in such a condition that a doctor had to attend her.

But the clergyman, the clerk, and the clerk's wife put a different complexion on the matter. So far as they could see she was not agitated at all, or even nervous when she came to be married. One of them said that she walked about the church with Samuel looking at the monuments, and that they ate nearly all the luncheon. She had had the entry in the register read to her in the vestry before she was asked to sign it, and never led the clergyman to think there was anything wrong. She ought to have noticed it was not St. George's, and that the statements as to her age, and the place where she resided were both false.

One cannot help thinking that the Vice-Chancellor had been influenced by the fact that the man was a butler, and also by his age.

The marriage was not suitable for an heiress of superior education. But there was nothing to prevent her

## THE WEDDING OF MRS. SAMUEL BROWN

telling John and his wife she was being pestered by Samuel to marry him. She said she promised him not to, but if the project was so distasteful to her, no promise would have kept her silent. When she said good-bye to them in their bedroom on the fatal morning, nothing could have prevented her from breaking down. Had it been a real melodrama, she could never have played her part in it with such consummate composure. She must have been attracted by him as well as repelled, not displeased by the thought of an elopement, and only disillusioned when she walked in another garden with another lover. No one ever suggested that she was weak-minded.

The House had been in her favour at the start, but after hearing these witnesses they did not desire to hear the other side. It would require evidence of overpowering strength to make the contract void, and they were of opinion that her consent had not been so far influenced by fear or the continuance of any persecution as to justify the interference of an Act of Parliament.

The newspapers of the following day said this meant the handing over of Miss Field to her husband when he came out of prison. They reckoned without the Vice-Chancellor. It was a set-back for him, but he still had hold of Brown. The ex-butler was not released until he had executed a settlement which deprived him of any direct benefit from the marriage, and had also undertaken to abstain from holding any intercourse whatsoever with his lawful wife. In May, 1853, the Vice-Chancellor said he did not consider he was justified

#### MARRIAGE A LA MODE

in holding him to the undertaking any longer, but in November Esther made her will, and in December she died.

Her fate is a warning that any girl who goes through the marriage ceremony without complaint or apparent reluctance will find it impossible to free herself again unless she is able to prove that her mind was so paralyzed that it only gave expression to the will of the man. There was a case of that kind in 1886. A young woman who had been cajoled into backing a number of worthless bills for her fiancé was marched by him into a register office. She attempted to leave, but he told her he would shoot her, and a friend of his held the door. She became dazed. She was ordered to take off her glove ; a ring was placed on her finger, which she promptly threw down ; her arm was jogged while she signed the register. The man told her she could go then, he had got all he wanted out of her. When her petition for nullity was heard, the registrar who was present at the ceremony admitted that she was in an excited state, and that she threw the ring away. Under these circumstances, so unusual in character, the marriage was annulled. It is obvious how very different the story in that case was from that of poor Mrs. Brown.

**XI**

**HIGH SOCIETY**



## XI

### HIGH SOCIETY

LOVE MAY rule the camp and the grove, but when it comes to the Court of Chancery strict proof is required of its credentials. That Court has good cause to congratulate itself on the way it dealt with a case which affected persons moving in the highest circles, whose names in the golden pages of Burke and Debrett one is almost afraid to disclose. George Augustus Chichester was the son of Lord Edward Chichester, and belonged to a family famous in history. His sister was the wife of Earl Ferrars, and he was staying with her at her husband's country seat in the month of May, 1853. Among the other members of the house party were a Mrs. Hungerford and her ward, Clara Thornhill. Miss Thornhill was a young lady of eighteen with large possessions, under the paternal supervision of the Lord Chancellor. Their visit extended for a week, and Mr. Chichester paid her a certain amount of attention, as was only natural and proper when his sister was her hostess. Mrs. Hungerford, who justly prided herself on being a very careful guardian, did not notice anything between them beyond the ordinary requirements of courtesy. It never entered her head to imagine that the fascinating

young scion of aristocracy would contemplate laying siege to the rich heiress, for none knew better than he did the sanctity surrounding a Ward of Court. It was true that on the last evening he said something about the embarrassed state of his affairs, and the difficulty he would have with the Chancellor when he offered himself as a suitor.

She paid no particular attention to that, for he seemed to be speaking in jest, and the talk drifted easily to another topic. In fact, he was trying to find out whether she was likely to help him. Both he and Lady Ferrars remembered the conversation, and drew an inference from it that if the jest were turned to earnest there would be no serious opposition on the part of the official guardian of the lady. If Mrs. Hungerford entertained any misgiving at all, it disappeared the next day. She noticed, when they were leaving, that Mr. Chichester studiously abstained from handing Clara Thornhill to her carriage. Nothing could be more satisfactory than that ; it was almost impolite.

Appearances are apt to be deceitful, and we have no doubt that Lady Ferrars, anxious to help her brother, was already toying with the idea that it would be an extremely good thing for him if the match could be arranged. He was in some considerable debt, and his principal source of income was the revenue he derived from an official appointment which made very little demand upon his personal attention. He was clerk of the peace for an Irish county, and, perhaps, Ireland was enjoying a period of tranquillity, or more likely,

he performed his duties through a deputy. Of course, the money attached to the heiress could only be a secondary consideration with him, but many people besides the Yorkshire Farmer have been glad to go where money is, and Lady Ferrars felt confident that the young people had been genuinely attracted to each other. Besides, her brother would eventually succeed to a title, and the position his wife would have ought to be weighed in the balance against her riches.

After Clara got home she sent Lady Ferrars a little present of a purse in token of a pleasant visit, and various letters passed in consequence. These letters were duly perused by the watchful guardian, and we learn on the best authority that "they contained nothing that a married lady, a peeress of the high rank of Lady Ferrars, might not write to a young lady who was the ward of a neighbour in the country." Lady Ferrars desired that she might be at liberty to send an ornamental basket in return for the purse. Mrs. Hungerford had no objection, but she thought it would be better it should come through her, and that she should present it in the name of the countess. After this graceful interchange of civilities, the basket arrived, and it looked the most innocent thing in the world. But lurking in the lining for Clara alone to find, was a letter which had been inscribed on linen in order that there should be no rustling of paper when the present was examined by other persons. It contained a secret encouragement to the heiress, against the consent, or without the consent, of her vigilant custodian, to give countenance to the

suit of the countess' brother, in spite of his poverty in this world's goods. At the time, the delicate stratagem successfully escaped Mrs. Hungerford's notice.

This is no backstairs gossip ; our informant on these intimate matters is no less a man than the Lord Chancellor himself. He considered them so painful and distressing that he declined to go into all the details, and he has not told us precisely how this romantic mysterious business came to be stopped. Something must have happened which aroused Mrs. Hungerford's curiosity, and then she discovered in the torn fragments of a letter a perfectly horrible thing. It was an ordinary kind of letter, written in black ink, with nothing particular in it. She had seen it when it first arrived. But now, written in crossbars over it, in the way that was dear to the Victorian age, was "something in a different ink, of a different writing, being a different matter that was written." That part of it had been written with lemon juice, which when held to the fire comes out a pale red colour. Its tenour was similar to that of the one in the basket, which was no doubt produced at the harrowing interview which followed. She had been hoodwinked, and her confidence betrayed.

Mrs. Hungerford took vigorous action, and the Chancellor has nothing for her but praise. She wrote to Lady Ferrars and Mr. Chichester in very plain terms, forbidding all further intercourse with her ward, and declaring their project quite impossible. The Countess assured her in reply that she would write no more, and

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in a way she kept her word. She did not communicate again with Miss Thornhill, but she wrote to her brother. "Imagine," said the Lord Chancellor, "here is a lady in Lady Ferrars' position, a peeress, a wife, and a mother of daughters, who writes to her brother thus : "I only wish she was my little sister, and no matter how you marry her, so long as it is properly performed, I will be only too glad to receive her with open arms as I feel I could love her so much." The Chancellor strongly suspected Miss Thornhill was intended to see that letter, and no doubt he was right. Mr. Chichester gave it to her, and she kept it carefully.

Clara lived with Mrs. Hungerford, at Dingley Park, in Northamptonshire, a fine old mansion standing in stately grounds. It is not far from a small market town, and some time after these happenings Mr. Chichester came down quietly with three companions and took rooms at the principal inn there. Having thus established himself in the neighbourhood, he proceeded to haunt the park and hunt the heiress. Presently, he succeeded in getting in touch with her, and then, always apparently in the company of his friends, who, perhaps, acted as sentinels, for, otherwise, one does not quite see what he wanted them for, there were clandestine interviews in the garden, at her own casement-window, or some other window where by arrangement they were to meet. And he did not hesitate to send her the letters of an eager lover. "They have never imprisoned the husband," he wrote, "beyond six or seven months, and that only in the case of an improper marriage, such as a ward running away

with a tutor or a servant. In our case it would be different; in fact, the world and the Lord Chancellor would wonder what we ran away for." His plan was to make for Ireland or somewhere else out of the jurisdiction, and of course, if they did run away together, that was the right thing to do. He told her he had consulted more than one Chancery barrister, and they assured him if they had the chance they would do it themselves. Some words in one of his melodramatic epistles particularly caught the Lord Chancellor's fancy : "To-morrow night what you ought to do, dearest Clara, is to say or write, Ready when you are—that will be now or to-morrow night, whichever you like. So, dearest Clara, be mine !" It is charmingly incoherent, but it seems to end up all right ! Her letters to him are no longer in existence : the careful Chancellor destroyed them all, but Mr. Chichester declared they showed that an engagement really existed between them.

In the absence of the strictest secrecy even the best laid scheme may gang agley. Mr. Chichester and his comrades were unwise in their conversation in the presence of gamekeepers. One of them, for instance, remarked to George Augustus, " I have been looking over your estate, and I think we shall have some fine sporting over it." The most blazing indiscretion of all was the young man's own, for he actually told the landlord at the inn he was there over a love-affair. No fond lover should have treated fair lady so ! It looks very much as if somebody gave Mrs. Hungerford a hint, for a cold wind blew through the garden. However it was, in some

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way or other the thing leaked out, the plot was foiled, and the Chancellor came to hear of it.

Everybody concerned was brought to London to see him. He induced the young lady to talk with him in a confidential way in his private room, and she told him all about it, and gave him every scrap of paper she possessed. "I have been with her for half an hour at a time," he said, "and on one occasion nearly an hour, so as to put her quite at her ease. She did not consent, and I believe she never had the least wish to consent, to any application for leave to make proposals. That she acted imprudently no one can deny, but she was led on to it by others who ought to have known better : I allude particularly to Lady Ferrars and Mr. Chichester." When the time came for him to deliver his judgment upon the case, he observed that the circumstances were of such a nature that he would have been well pleased if he could have been spared the pain and anxiety of considering them, but he had done his best to sift them to the bottom. Indeed, it is only due to him to say that we are indebted to his research for all that we know about the matter. When he came to the basket incident he said it was to the disgrace of Lady Ferrars, "and I cannot qualify the expression, for it was most disgraceful, and it must for ever lower her in the society of her equals." He did not think he was called upon to make an order to commit her, but he had arrived at that conclusion with very great doubt and anxiety, and not at all confident that he was discharging his duty. "Lady Ferrars, I think, if she has any feeling, will be sufficiently punished

by the publicity which this proceeding necessarily gives to her conduct." Certainly she received such a reprimand from him as she can never have forgotten. Then he turned with equal severity to Mr. Chichester, who had assured him on his honour he never intended to push the matter further until he had discharged his debts and gained his approval, and now asked that he might beat liberty to submit a formal proposal for the lady's hand. "Mr. Chichester did endeavour to induce the plaintiff, Clara Thornhill, to contract a marriage with him without the sanction of the court, and did endeavour clandestinely to remove her from the custody of her guardian. The tipstaff will now immediately take Mr. Chichester into custody, and he is committed to the Queen's Prison."

That gentleman did not stay very long at his new address. His father came forward at once and cleared off his debts for him. He filed an affidavit that he had honestly thought the young lady was attached to him, and that he would undertake never to approach her again. Sir Benjamin Brodie certified that further imprisonment would endanger his life, he was released from prison before he had been six weeks there, and his father took him back to Ireland with him.

Undoubtedly the Lord Chancellor had an unpleasant task to perform, and undoubtedly he performed it with dignity ; but it must have been a little awkward afterwards when he met Lady Ferrars in society. George Augustus did not play his part very well. If we had it all our own way with this story he would have acted

## HIGH SOCIETY

rather differently, and the wedding bells would ring at the end of it, with Clara Thornhill on the high road to become a Marchioness.

What really happened seems to suggest that the Chancellor did exactly the right thing. The young couple could not have been so necessary to one another's existence as at one time they were apparently inclined to believe. The *Gentleman's Magazine* for February, 1856, contained this announcement among the fashionable marriages :—“Lately, Capt. Clarke, son of Mr. Thomas Truesdale Clarke, of Swakeley near Uxbridge, to Miss Thornhill, the great heiress.” Probably she had just come of age, and the first use she made of her liberty was to lose it.

However, that entirely extinguishes our interest in Mr. Chichester. In his later years he made marriage his hobby, for he married three times, and he figured in the law courts on another occasion ; also he was fifth Marquis of Donegal ; but the days of romance in an old-world garden never came again.



## **XII**

### **THE ROYAL MARRIAGE ACT**



## XII

### THE ROYAL MARRIAGE ACT

IN THE days when it was possible to contract a valid marriage anywhere and at any time in defiance of the Canons, and the only record might be a piece of paper, the ceremony could be concealed with facility, alleged as easily, and sometimes as easily repudiated. The provisions of Lord Hardwicke's Act made these things infinitely more difficult for the public, but they did not extend to marriages of any of the Royal Family. The Royal Family remained under the old common law, subject to the somewhat nebulous claims of the Royal Prerogative, and required neither banns nor licence. It was this laxity which facilitated the marriages of George III's brothers, and tempted Olivia Serres to concoct the story of her own Royal descent.

Sir Edward Walpole, brother of Horace Walpole, and the son of the great Prime Minister, Sir Robert Walpole, fell in love with a seamstress named Mary Clement. His father would not allow him to marry her. They dispensed accordingly with the marriage ceremony, but lived together on the footing of husband and wife all their lives, and they had four children, well and virtuously brought up. Horace was always as fond

of the second daughter, Maria, as he could be of anyone, and describes her as beauty itself, with a great deal of wit and vivacity, and perfect modesty. He had the charge of the arrangements when she married Lord Waldegrave, and the wedding in her father's drawing-room was as quiet and seemly as a modern marriage : it was solemnized just before dinner in the presence of seven members of the family, and the bride and bridegroom drove away into the country at eight o'clock in the evening. He records with pleasure that "there was neither form nor indecency, both of which generally meet on such occasions." She was ideally happy with her husband for four years, and then, when she was twenty-six, Lord Waldegrave died. "As she is so young," said her uncle, "she may find as great a match and a younger lover—but she can never find another Lord Waldegrave."

The words were prophetic. Three years afterwards, at her residence in Pall Mall, between 7 p.m. and 9 p.m., on 6th September, 1766, she was married to William Henry, Duke of Gloucester, then aged twenty-three, by the Rev. Dr. Morton, one of her domestic chaplains. The Duke had the sense of honour which the bride's father had lacked, and he agreed there must be a wedding; but he was afraid of the anger of his brother, George III, and, therefore, it must be a secret one. There was not a single person present besides the priest, and no document was drawn up recording the ceremony. Dr. Morton died shortly afterwards, and then there was no one who could testify that they were husband and wife.

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Very dearly did they pay for their folly, for the relations between them were canvassed publicly, and the reputation of the lady suffered the gravest injury. There were rumours that they were married, but society much preferred the version that they ought to be. After four years, at a time when the Prince believed he was at the point of death, he confided the facts to two of his equerries, and the Countess also confessed them in strict confidence to the Bishop of Gloucester, but the world was not told.

On 2nd October, 1771, in the drawing-room of the bride's house in Hertford Street, Mayfair, between 6 p.m. and 8 p.m., Henry Frederick, Duke of Cumberland, was married to the Honourable Anne Horton, *née* Luttrell, daughter of Lord Irnham, widow of Major Christopher Horton. This was a clandestine wedding too, and with greater reason, but the lady displayed more worldly wisdom than Lady Waldegrave. She had her sister present as a witness, and the clergyman, William Stevens, made a memorandum of the ceremony. Lady Waldegrave and her Royal husband had married for love : Prince Henry Frederick had little reputation left to lose, and his marriage to Mrs. Horton was brought about, it is said, by means of some stern hints made to him by her resolute brother, the well-known colonel. What the decent section of society thought about it may be gathered from the exclamation of Junius when the facts came out—"A Luttrell shall never succeed to the crown of England !"

When the Duke of Cumberland plucked up courage

to inform the King of his marriage, His Majesty called him a fool, blockhead and villain, but he was helpless in face of the proofs. By that time, too, he had been made uncomfortable by the tale about his other brother. He could at least prevent such occurrences in the future, and he set to work forthwith to secure the passing of an Act of Parliament to put a stop to them.

The Royal Marriage Act became law in March, 1772. In May, Lady Waldegrave, by the Duke of Gloucester's permission, acquainted her father with her own marriage, and in September the announcement of it was formally made to the King. His Majesty cried, for he loved his brother Gloucester, but he declined to see him at Court. It was not until the following year, when Lady Maria was expecting her first child, that he promised the institution of an enquiry after her confinement : "This is the only part His Majesty can take with propriety," the letter ran, "for he can be no otherwise concerned than as to the legality of the proceeding, as he cannot but disapprove of the marriage." Presently, however, he saw that the right course was to hold the enquiry at once, and the Archbishop, Lord Chancellor and Bishop of London, were nominated for the purpose, and directed to investigate the circumstances of both the marriages. The Commissioners took such evidence as they could get, which in the Gloucester case amounted to no more than the acknowledgments on oath of the parties themselves, and their report confirming the facts was directed to be entered in the books of the Privy Council three days before the child was born.

#### THE ROYAL MARRIAGE ACT

These two marriages were the last of the Fleet variety in this country. The Royal Marriage Act provides that no descendant of George II, other than the issue of Princesses marrying into foreign families, shall be capable of matrimony without the consent of the Sovereign signified under the Great Seal and declared in Council, and that the consent shall be set out in the licence for the marriage. Marriages and matrimonial contracts without such consent are null and void. The Act, however, contains the further provision that any such descendant who is unable to obtain the Royal consent may, if he has attained the age of twenty-five, give notice to the Privy Council of his proposed marriage, and a year later, unless both Houses of Parliament express their disapprobation within that period, he may proceed to solemnize the marriage. Any person knowingly and wilfully solemnizing, assisting or present at any marriage or matrimonial contract in contravention of the Act incurs the penalty of *praemunire*.

It is possible that neither the Gloucester nor the Cumberland marriage would have occurred if this Act had been in existence before. The justice of it was hotly disputed at the time, and doctors disagree about it to this day. It was conceived in the interests of the State, for the alliances of our Royal Family are matters of national concern. The principle which underlies it was vindicated when safeguards were devised by Parliament for the minority of Queen Victoria. But the Act had unforeseen consequences. It was thought that marriage without the Royal consent had been rendered impossible for those to whom it applied. Instead,

a distinction emerged between what was lawful and right and what seemed to be right, and marriages were contracted in disregard of its provisions.

The first of these was the marriage of the Prince of Wales (afterwards George IV) with Mrs. FitzHerbert. That lady was of high lineage, but she was a Roman Catholic. It would have been out of all question for any King of England to sanction such a marriage, for it involved the forfeiture of the succession to the throne. The ceremony was performed in accordance with the rites of the Church of England by a recently ordained clergyman under conditions of absolute secrecy. It satisfied the requirements of the religion of both the parties, and it was valid in every essential but the one ; it lacked the Royal consent. One of them always regarded it as binding upon her conscience, and she had the consolation of knowing that it was recognized by those of her own faith abroad. She did not weigh sufficiently the danger to which she was exposing the State, but which of us shall condemn her ? The statute rendered it null and void in the eye of the law ; the way was open to maintain there had been no marriage at all, and what followed is a commonplace of history. The marriage certificate is in existence still, but the names of the two witnesses are missing, cut out by her own hand at their request.

The marriage of the Duke of Sussex, another son of George III, was not complicated by the difficulties of religion. Prince Augustus Frederic was the sixth son of the King, and it was unlikely that he would be

#### THE ROYAL MARRIAGE ACT

called to the throne. In 1793, when he was twenty, he married in Rome the Lady Augusta Murray, daughter of the Earl of Dunmore. A clergyman of the Church of England, who chanced to be in Rome at the time, officiated, and the wedding was preceded by solemn declarations in writing made and signed by both parties. There were no witnesses, and the parents of the bride were only informed after it was over. After the return of the couple to England they gathered an impression that some objection might be made to the marriage upon the ground that it had been celebrated abroad, and accordingly the ceremony was gone through again. The banns were put up at St. George's, Hanover Square, in the names of Augustus Frederic, bachelor, and Augusta Murray, spinster, and the curate married them without any suspicion of their identity.

It then became necessary to approach the King, but he was adamant. He rejected the suggestion made by the Duke that he should renounce his rights as a member of the Royal Family, and promptly instituted a suit in Doctors' Commons for a declaration that the marriage was a nullity. Sir William Scott, who prepared the pleadings on behalf of the Crown, went out of his way to refer to the ceremony at Rome as "this show of a marriage." The young couple had to rely upon it, as they found the English marriage was undoubtedly barred, and their only chance was to submit that the English Act was inoperative outside the jurisdiction. No one really doubted there had been a marriage, but, possibly because Mr. Gunn, the clergyman, was too frightened

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to give any evidence—he declined to answer questions about it in some Chancery proceedings because he might expose himself to ecclesiastical censure—it was not proved as the law required, and the judge declared that in any case it could not stand in face of the statute. Thus they were disgraced. There were two children of the marriage, but at last Lady Augusta could endure her equivocal position no longer, and ceased to reside with her husband. After her death he married again.

After the Duke himself had died, their son demanded his right to take his seat as a peer of the realm. He was rather more successful than his parents had been, perhaps because there was no longer a George III on the throne, for the marriage was at last established in fact, but the Act remained an insuperable obstacle, and it was again pronounced null and void by the law of this country. In Hanover, on the other hand, its legality was recognized without demur, and in certain events Lady Augusta's son would have ruled over that kingdom.

George III had his own particular ideas as to the kind of matrimonial alliances which were suitable for his children, but perhaps the marriage of his other son with Mrs. FitzHerbert had its share in determining his attitude towards this marriage. However, Lady Augusta was herself of Royal descent.

The last marriage to be referred to is nearer our own times.

When the late Duke of Cambridge married Miss Fairbrother in 1840, “the Royal consent was neither sought nor granted.” The course he took was tacitly endorsed by society : his fifty years of married life were

#### THE ROYAL MARRIAGE ACT

years of unbroken felicity, and his memory is green among us as a simple-hearted Christian gentleman.

Princes and people alike have rebelled against the undue severity of the Royal Marriage Act. It is indeed true that no Prince has ever availed himself of the provision which comes into operation on the completion of his twenty-fifth year, but the marriages in this chapter were entered upon at an earlier age, and a slur would have been cast upon them by adopting that procedure : on the other hand, it is permissible to cite the case of William Frederic, second Duke of Gloucester, whose marriage was postponed for reasons of State until he was over forty. Some there are who argue that the church is not bound by the Act because Convocation was not consulted ; but such special pleading, which would affect the validity of legislation covering a couple of centuries, is not called for in this matter. It is sufficient to say that the technical illegality of the marriages referred to has ceased to be consonant with the feeling of the nation. A similar view has been ascribed to William IV. That a marriage in contravention of the Act should involve surrender of the Royal status so far as the issue of the marriage is concerned is one proposition : to deny that the marriage is *verum matrimonium* is another. In the present day it is unthinkable that a Prince of the Blood would take a second partner during the life of one to whom he had already been joined in holy matrimony, and under these circumstances the justification for refusing recognition to such a marriage, subject to due conditions, seems to be taken away.



# **XIII**

## **FALSE MARRIAGE LINES**



## XIII

### FALSE MARRIAGE LINES

IN TRINITY Term, 1822, Dr. Lushington moved in the Prerogative Court on behalf of Her Highness Olive, Princess of Cumberland, for leave to cite the King's Proctor to see a will of George III proved in solemn form. The alleged will ran thus :—"George R.—In case of our Royal demise, we give and bequeath to Olive, our brother of Cumberland's daughter, the sum of fifteen thousand pounds, commanding our heir and successor to pay the same privately to our said niece for her use, as a recompense for the misfortune she may have known through her father. June 2, 1774. Witness—J. Dunning. Chatham. Warwick."

The judge, observing that Courts of Justice cautiously abstain from deciding more than what the immediate point submitted for their consideration may require, said that the only Royal will deposited in Doctors' Commons was that of Henry VIII, and he had no power to entertain the application.

It is impossible that Dr. Lushington, fresh from his brilliant triumph in the defence of Queen Caroline, would have had anything to do with a case of this singular nature if he had not had a belief in it. The most

startling documents must have been withheld from him, and he cannot have realized that his talents were engaged in one of the most audacious and unscrupulous attempts at blackmail ever perpetrated.

There was a certain Quakeress named Hannah Lightfoot whose name was coupled in eighteenth century gossip with that of George III when Prince of Wales. For example, in 1770 the *Public Advertiser* informs the world that the Duke of Cumberland (the King's youngest brother) is about to publish "The letters of an Elder Brother to a Fair Quaker," which will entirely retrieve the literary fame of an illustrious family"; and the *Citizen* advertises in 1776 that it is proposed to print under the title of "Court Fragments" the "History and Adventures of Miss L..htf..t, the Fair Quaker, wherein will be faithfully portrayed some striking pictures of female constancy and princely gratitude." All that appears to be definitely known about the lady is that there is a record in Parson Keith's register of the marriage of a person bearing that name to one Robert Axford in 1753, and she was formally excommunicated at the Quakers' Westminster Monthly Meeting held in the Savoy in 1756 for being "Married by a priest against the known rules of the Society." The various accounts of her relations with George III are very silly and mutually destructive. The King's character, as it has been drawn for us, was quite at variance with affairs of gallantry, and there is not a scrap of evidence to show that they ever even met. Such tales are not uncommon in the present day, and they are told of those of much

lower rank. But the small-talk of that period was as full of scurrilous malice as the tone of society was degraded, and Mrs. Olive Serres, born in 1772, with a talent for intrigue, picked up in her childhood little bits of this scandal which she ultimately wove into the egregious romance of the Princess Olive.

The claim she made, so far as appeared on the surface, was that she was of Royal blood, a daughter of Henry Frederick, Duke of Cumberland—a man whose love affairs comprise his whole biography—and one Olive Wilmot, to whom, it was alleged, he was secretly married by the bride's father, Dr. Wilmot, in 1767. She had in her possession several certificates of the supposed marriage, and some of them were presumably shown to Dr. Lushington. She must have had two more by her then which he did not see. These two were very remarkable, for on the back of each of them was another certificate to the effect that George himself had been married by Dr. Wilmot to Hannah Lightfoot, and that there were children of that marriage. These particular documents were not necessary to her case. They invalidated the King's subsequent marriage to Queen Charlotte and destroyed the hereditary right of the Royal House to the throne of England. When Mrs. Serres forged them she set out to make a charge which threatened the foundations of the State, and she imagined no price would be too high to prevent them being made public.

It seems certain that the plot was complete when Mrs. Serres went to Doctors' Commons, for all its details can be traced in "The Princess of Cumberland's Statement

to the British Nation," which she brought out the same year. Although no direct reference to Hannah Lightfoot is contained in it, the existence of proofs of the King's marriage to her is hinted at very plainly. When Mrs. Serres wrote her pamphlet she was living on Ludgate Hill, within the Rules of the Fleet, to which place she had been committed for the non-payment of ten guineas due on a promissory note : she took a different view of this unpleasant predicament herself, and even attempted to make capital out of it—"this sacrificed child of parental error, the amiable, high-born and highly accomplished Princess Olive, is languishing within the walls of a prison for a trifling debt occasioned by the minions of ministerial power."

Her story begins with Dr. Wilmot, Fellow of Trinity College, Oxford, and his brother Robert, descendants of the family of Wilmot, Charles II's Earl of Rochester. Dr. Wilmot was the intimate friend and adviser of princes, and was himself married, but secretly, as became a Fellow of Trinity, to the Princess of Poland, by whom he had a daughter whose name was Olive. There can be no doubt, she says, that he was the real author of the *Letters of Junius*. Robert was a house-painter. It is possible that a house-painter then was a very superior person, for Robert's wife had been at school with the Gunnings at Highgate, and he lived at Warwick in a "large ancient mansion called St. John's." The house is still standing there—a mysterious rambling place with remains of hiding-places and secret passages. The future Mrs. Serres was baptized at St. Nicholas Church, Warwick,

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by Dr. Wilmot, as Olive, daughter of his brother Robert.

When she grew up she married a distinguished marine-landscape painter and member of the Royal Academy, but her married life was a painful one and ended in a separation by mutual consent. After that she supported herself and her children by her brush and her literary talents, and was honoured by the patronage of the Royal Family.

We may break off here for a moment to remark that one of her books was called *Olive's Advice to Her Daughter*, and her husband suggested that *The Devil Rebuking Sin* would have been a more appropriate title for it. He declared in his will that she was the origin of all the troubles in his life, a born romancer and immoral woman. He died in debt, and he made his will, not because he had anything to leave, but for the satisfaction of solemnly disinheriting wife and child.

She goes on to say that in 1815 the Earl of Warwick came with the Duke of Kent to see her, and under an oath of secrecy disclosed the secret of her Royal birth. "Casting herself before the Earl and embracing his venerable knees—'Would I was more worthy of the high rank it has pleased Divine Providence to call me to !' exclaimed the agitated Princess : and the Duke of Kent, his delighted and humane eye beaming ineffable goodness, pressed her to his full heart : 'I will protect you, Olive, with my heart's best blood, and see you yet restored to your Royal rights !'"

Lord Warwick handed her the papers which Dr. Wilmot had confided to his care. The minions we

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mentioned above contemptuously designate them as scraps, but their condition is due to the fact that Lord Warwick, who carried them about his person, cut away the superfluous parts, in order that the old writings might be pasted on other paper for their better preservation. One of them runs as follows :—

“ May 1st, 1773.

“ This to certify that the marriage of the underwritten  
“ parties was solemnised according to the rites and  
“ ceremonies of the Church of England, March the 4th,  
“ 1767, at Lord Archer’s house, by myself, at nine in  
“ the evening.

“ J. WILMOT (Minister).

“ HENRY FREDERICK.

“ OLIVE WILMOT.

“ Present at the Marriage :—

“ Lord BROOKE

“ J. ADDEZ.

“ Attested before :—

“ CHATHAM.

“ J. DUNNING.”

There was an order addressed to Dr. Wilmot, signed by George III, that Olive, the child of the union, should be baptized as the daughter of Robert Wilmot. Lord Warwick explained to her that this was done because just before she was born the Duke married Mrs. Horton, and if it had become known he was married already he would have been prosecuted for bigamy. She says there were a great number of papers, but “ the Princess has only inserted in part the certificates of her birth, as some are not yet to be made public.” It is noticeable that she does not mention Hannah Lightfoot, but she adds significantly that the reading of the documents “ gave the Duke serious

concern : their import was connected with the fate of many besides that of the Princess. The Duke, as he perused them, trembled with consternation."

After that memorable occasion he treated her as his niece, making her considerable presents of money, and actually drawing up a memorandum which is reproduced in the pamphlet expressing his desire that after the deaths of the Duchess and himself, Olive should undertake the guardianship of his child—that is, of Her Majesty, Queen Victoria !

The deceases in 1820 of the King and of the Duke of Kent released the Claimant from her promise of secrecy. A petition was drafted by a genealogist of repute named Bell and presented to the new monarch with twelve affidavits in verification of the signatures. In one of the documents attached to the petition we read, under the sign-manual of George III, that he desired that Olive, the Duke of Cumberland's daughter, should be acknowledged by the Royal Family after his death, "in return for the confidential services rendered Ourselves by Dr. Wilmot in the year 1759."

On 23rd January, 1821, she continues, "about five in the afternoon, Mr. Bell presented himself in the Princess Olive's drawing-room, and requested all the company to be silent ; he stood in the centre of the room and said aloud, ' I am commanded to inform your Highness that his Gracious Majesty, George the Fourth, has been pleased to acknowledge your Highness in Council, and to confirm all your Royal prerogatives as Princess of Cumberland ! ' The Princess, greatly agitated, fell

upon her knees, and with tears of gratitude returned thanks to the Almighty for having protected her to that joyful period." She gives the names of the persons who were in the room.

Some days later Mr. Bell asked to see a particular certificate of her parents' marriage which had not been shown to him. But the absence of any official corroboration of his statements was rendering her cautious, and she excused herself from doing so, and also from showing him "certain other papers"; whereupon he took leave to inform her his bread was in jeopardy, and he could not afford to ruin himself by proceeding further in her affairs.

The grain of truth which seems to be concealed in this strange episode is that Mr. Bell had discovered she was keeping some of the cards up her sleeve.

By this time many persons and personages thoroughly believed in her, and we learn from other sources that she adopted great state, emblazoning the Royal Arms on her carriage, and driving through St. James's Park with four white horses, her servants dressed in the Royal livery.

In June, 1821, she was sued on the promissory note for ten pounds. While that matter was pending she kept things going by writing to the Bishop to administer to her, as Princess of Cumberland, the rite of Confirmation, and in September she was baptized at Islington parish church as "Olive, daughter of Frederick Henry, Duke of Cumberland, and Olive his first wife, born 1772."

The Princess was next committed to the Fleet upon the judgment which was eventually obtained against her, and the subsequent letters which appear in her pamphlet

were dated from Ludgate Hill, within the Rules of the prison. Extracts from three of them, addressed to Lord Sidmouth, the Home Secretary, will suffice. The italics, which are her own, are important.

“ . . . My Lord, you well know why my claims are neglected : *a mighty cause* exists ! But it is a duty that I owe to myself and the *English nation*, to give a narrative of facts *as they are*, unless immediate justice is done me. I am Olive, the only child of the late Duke of Cumberland, by Olive, his virtuous *injured* wife ; and very shortly the public shall know the great and forbearing conduct of Doctor Wilmot. To him, at one period, the English were indebted for tranquility : it can be *proved*, my Lord. . . .”

“ . . . I am far from the character your Lordship, or Mr. Hobhouse, have falsely represented to the world ; and as I use no person’s pen but my own in the defence of my rights, I venture to observe, that your Lordship, and every one of His Majesty’s Ministers, well know why Olive, Princess of Cumberland, has to lament the most uncalled-for injuries, and why it is pretended that there is no truth in her claims. You dare not, my Lord, see my original papers—you fear the *etcetera* attached to them ! . . . ”

“ My Lord,—Confined at this moment to my bed by a fall, which has dislocated my ankle, occasioned by the oil-cloth of the stairs being loose, I sincerely hope that this letter will experience the immediate attention of His Majesty’s Ministers, as I am totally unprovided with those comforts that my illness requires.

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I shall be obliged, my Lord, if some of the arrears of the £500 per annum, commanded by his late Majesty to be paid me, be allowed, as I find it impossible to provide for my daily support without pecuniary assistance, having disposed of the whole of my trinkets during my three months' captivity. . . . Behold me, faint in agony and anguish, extended upon a solitary bed, with but one friend (the late beloved Duke of Kent's son) to administer consolation, from whose hand my medicines are taken. . . ."

These letters bring us to the appeal to the British Public with which the pamphlet closes.

"The Princess of Cumberland will be grateful for a sufficient loan, by subscription, to enable her Highness to proceed in the recovery of her JUST RIGHTS, being at this period without funds for that purpose or daily support!—not having received one guinea on the account of her Royal birth, either from Government or any branch of the Royal Family!"

"The Princess has been now nearly ten months a prisoner for debt!"

The next year Sir Gerard Noel presented a petition in the House of Commons on her behalf, but, on Sir Robert Peel's declaration that her contentions were baseless, his motion for a Committee was rejected without a division.

In 1833, Miss Macauley issued a brochure on behalf of the Princess which she dedicated to the Reformed Parliament.

She sets out documents similar to those in the other

one, but nothing relating to Hannah Lightfoot. She gives one piece of information, however, which was not disclosed before—that in 1821, General Wetherall waited on the Princess Olive to offer her fifty thousand pounds in the name of the Royal Family, if she would compromise her birthright and give up her papers ; a proposal which, “of course,” the Princess declined.

Miss Macauley tells us how the Princess has endured seven years of captivity before being released : she has been charged with delusions, immorality, poverty, and it has even been said she is so skilful an adept in the art of transcribing that there is not a handwriting of any kind which she cannot imitate. Miss Macauley was indeed a good believer, and her peroration was calculated to appal the members of the Reformed Parliament. “ Even during the short period I have known her Royal Highness, her trials have been extreme. I blush while I transcribe the record, yet my object is to speak fearlessly the truth, be the hazard what it may—I have known this lady, this daughter of the Duke of Cumberland ! niece of George III !! cousin to the reigning monarch !!! Duchess of Lancaster !!! and greater than all—Granddaughter to the immortal Junius !!! I have known her to want food. . . . Is this Law, Religion, or Justice ? ”

The next year Mrs. Serres was back again in pitiful captivity, pondering these difficult questions. She died in captivity, November, 1834, and was succeeded by her daughter, the Princess Lavinia, wife of another painter, one Ryves, but, like her mother before her, living separate from her husband.

Sir Gerard Noel championed the new Princess, and her claim was kept before the public by an attempt to obtain George III's legacy through proceedings in Chancery. In 1858 she issued the "Appeal for Royalty," setting the story out over again, but this time there were no innuendoes—the marriage of George III and Hannah Lightfoot was put in black and white, and copies of the certificates relating to it were printed in full.

She made a terrible legal blunder by applying to the Court for a declaration under the new Legitimacy Act of the validity of her mother's marriage with Serres. Had her mother been a descendant of George II, that marriage would have been null and void for lack of the Royal consent! Then in 1868 the curtain went up on the last act of the drama. She petitioned the Court to declare that there had been a good marriage between the Duke of Cumberland and Olive Wilmot.

Two years before that an American journalist had interviewed her "in the plain little parlour of a common lodging-house," and it is manifest that the means at her command did not permit of the employment of leading counsel. The Crown was represented by the best advocates of the day, but Mrs. Ryves retained Dr. J. W. Smith and Mr. D. M. Thomas, gentlemen whose names, observes the American, would not be familiar on the other side of the Atlantic. Perhaps it is a pity that the claim was not investigated forty years earlier, when Dr. Lushington held a brief comparatively free from absurdities. It would have been presented by that master of advocacy

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in the best possible way, while, on the other hand, the task of exposing the wickedness of the fraud, at a time when many of the persons whose names were dragged into it had died within living memory, would have been rendered a comparatively easy one. Still, it may have been as well, because now it was impossible to avoid introducing the Fair Quaker. The case required a full measure of credulity in any who were prepared to undertake it.

It was heard before the Lord Chief Justice, Lord Chief Baron, Judge Ordinary, and a Special Jury. Dr. Smith told them that as Dr. Wilmot had performed the marriage of George III to Hannah Lightfoot in 1759 when he was Prince of Wales, he had a strong hold upon him when he ascended the throne and married Queen Charlotte. Dr. Wilmot had also married his daughter, Olive, to the Duke of Cumberland, and accordingly, when the Duke in his turn proceeded to marry someone else in the person of Mrs. Horton, and it became necessary to hush up *his* previous marriage, Dr. Wilmot was in a position to demand such written proofs as would at all events secure the future of his daughter's child. He had purposely endorsed certificates of the King's first marriage upon certificates of the first marriage of the Duke, so that the revelation of the one should involve the revelation of the other. These certificates Dr. Smith proceeded to read, and one of them ran :—

“ This is to certify that I lawfully married George, “ Prince of Wales, to Hannah Lightfoot, April 17th,

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“ 1759, and that two sons and a daughter are their  
“ issue by such marriage.

“ J. WILMOT.

“ CHATHAM.

“ J. DUNNING.”

Then he read two more, and again one will suffice for us :—

“ April 17th, 1759.

“ The marriage of these parties was this day duly  
“ solemnised at Kew Chapel, according to the rites and  
“ ceremonies of the Church of England, by myself

“ J. WILMOT.

“ GEORGE P.

“ HANNAH.

Witness to this Marriage,

“ W. Pitt.

“ ANNE TAYLER.”

The Lord Chief Baron said : “ We are bound to take notice that George III was publicly married to Queen Charlotte, and that they were publicly crowned. If there was a prior marriage, and the first wife was living at the time of the second marriage, George IV may have had no right to the throne.”

The Attorney-General : “ Nor has her present Majesty. I do not disguise from myself that this is nothing less than a claim to the throne.”

After this couple of bigamies, which incidentally went to show that George III had three children by the Fair Quaker, his will, the will of “ Hannah Regina ” in favour of Olive Wilmot witnessed by Dunning and Pitt,

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"George III's solemn commendation of Olive Our Niece to Our faithful Lords and Commons at our Royal demise," and nearly seventy more historical curiosities, seemed only commonplace. Netherclift, the handwriting expert, declared that, in his opinion, nearly all the signatures were genuine, but he could not accept those of Dunning and Chatham. Lavinia Ryves, who was three days in the witness-box, asserted she was actually present at the momentous interview with His Grace of Kent and Lord Warwick in 1815, and saw the Lightfoot certificates and the other papers given to her mother. After that the Duke had made her a personal allowance of four hundred pounds a year.

During her cross-examination she admitted that her mother might have practised astrology for an amusement, had interviewed a ghost, imagined someone had poisoned her, and offered to lend the Prince of Wales twenty thousand pounds when she probably did not possess a penny. She agreed that the theory that the *Letters of Junius* were written by Dr. Wilmot rested upon Olive Serres' alleged happy discovery of part of the original manuscript, and that her pamphlet on that subject went fully into the question of handwriting and the modes of giving the appearance of age and old watermarks to new paper. She was unable to explain a letter signed by her mother in which she called herself the daughter of the Duke of Cumberland by the wife of Captain Payne, two letters in 1817 in which she said she was the natural daughter of the Duke and Dr. Wilmot's sister, and an open letter to the English nation in which she said that

Dr. Wilmot died unmarried. Finally, Queen Hannah had spelt the word "offspring" in her will as "orf-spring," and the same mistake occurred in a declaration bearing the signatures of Chatham and Dunning; Mrs. Serres had written it that way herself time after time!

Opening the Crown case, the Attorney-General declared that the Polish Princess was a myth. If Pitt had dared to suppress Hannah Lightfoot and her children, Dr. Wilmot would not have allowed his own daughter to be treated in that way, and would have vindicated her honour much more practically than by writing the *Letters of Junius*. The secret was kept for forty-three years, and never even suspected before 1815, although all the actors seemed to have been occupied night and day in writing out little bits of paper, telling the whole story. When finally it was disclosed by the original claimant, every one of them was dead. Mr. Netherclift had faltered, floundered, and contradicted himself. Mrs. Ryves reminded him of a certain Royal personage who firmly believed he had been at Waterloo, and at last appealed to Wellington to corroborate him, when the Duke tactfully answered, "I have often heard your Majesty say so." She was over seventy years old, and had ceased to draw the line between memory and imagination. As for Mrs. Serres, it was obvious she had been for years on the verge of insanity. Eighty-two documents had been put in evidence, and apparently there were forty or fifty more.

Then the jury stopped him. Dr. Smith proceeded,

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most improperly, to declare he believed in his case, and dwelt on the significance of the allowance from the Duke of Kent (which drew from the Attorney-General the retort that it was a perfect fiction). The Chief Justice summed up, the verdict was recorded, and the documents were impounded. The Attorney-General added that he had been prepared to prove that Dr. Wilmot was away at Oxford on the day of the pretended marriage in London.

Mrs. Ryves issued a manifesto—"Was Justice Done?"—and lodged an appeal to the House of Lords which was dismissed in 1868. She died in poverty shortly afterwards.

A recent writer has laid stress on the circumstance that Mrs. Ryves was allowed to go at large after the trial, and considers it significant; another declares that the claim she made renders it impossible to be sure that the only marriage contracted by the Duke of Cumberland was that with Mrs. Horton. Credulity has no limits! When such things are gravely said, it is time to set out the facts once again.



**XIV**

**OLD DOCTORS' COMMONS**



## XIV

### OLD DOCTORS' COMMONS

IN A recent examination in general knowledge one of the questions was: "Where is Doctors' Commons?" The majority of present-day Londoners have hardly so much as heard of it, and yet less than a hundred years ago nearly all the wills went there for probate, as now they go to Somerset House. You could discover in the Prerogative Will Office to whom everybody left his money, and how much William Shakespeare made out of his plays. It was also, and still is, the chief centre for the issue of licences to marry in church forthwith without any of the usual preliminaries. The neighbourhood took its name from the College of Advocates, established in the reign of Henry VIII, which built two quadrangles with hall, chapel, library, and garden upon the land lying between what are now the premises of the Bible Society and the Civil Service Stores. The Stores stand where the Will Office stood, and Queen Victoria Street runs through the garden below.

On the one side of the College, on Paul's Wharf Hill, were the tenements known as "Camera Dianæ"—Diana was Henry II's Rose of the World, Fair Rosamund, and this was her London bower. On the other

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was the King's Wardrobe, where Richard II spent the night before Wat Tyler was slain.

A number of quaint tribunals, some of them the oldest in England, held their sittings in the hall. "It's a little out-of-the-way place," said Dickens, "where they administer what is called ecclesiastical law, and play all kinds of tricks with obsolete old monsters of Acts of Parliament which three-fourths of the world know nothing about, and the other fourth supposes to have been dug up in a fossil state in the days of the Edwards. It's a place that has an ancient monopoly in suits about people's wills and people's marriages, and disputes about ships and boats." The red-robed advocates, doctors of civil law, of whom some had a European reputation for statesmanship, ranked as high above the ordinary barrister as the proctors who briefed them and who went into court wearing their hoods, were above the practising attorney. Their chambers and offices abounded in the alleys and courtyards lying between the College and the south side of St. Paul's churchyard, and most of them lived where they worked. The business they did rarely was large, and the doctor who sat as a judge in one court was always ready to practise as an advocate in another. The Admiralty judge complained bitterly to the Lord Treasurer in 1558 of the jealousy of his professional brethren who refused to act for him when he accepted a brief elsewhere, "so as to make a competent living." The judge of the Prerogative Court was fortunate, as fees were payable to him on each will proved, and in 1832 he was drawing over

£3,000 a year ; but the judge of the Arches, a court of appeal from all the ecclesiastical tribunals in the country except the four northern counties, only received £22 18s. 9d., and his registrar £140, which, it was truly said, were utterly inadequate emoluments to sustain any court.\*

The court of final appeal was known as the Delegates, and the judges there received a guinea a day, which was perhaps what was fixed in the days of King Hal, who created the court when the appeals to Rome were abolished. There never was a court like it. It was separately constituted for each case ; and usually consisted of three common law judges and four or five of the advocates. They arrived at their decision by taking a vote, and if none of the common law judges voted in the majority, or if there was an equal division, additional members were added, and the case was re-heard. In one case this occurred three times. It was one of its peculiarities that no reasons were ever given for its decisions, and the principles of law which guided it were never illuminated by any judgment. Probably it was a wise precaution, for the only advocates who cared to serve on

\* NOTE.—During the Napoleonic Wars the Court of Admiralty, presided over by Lord Stowell, was amazingly prosperous. Defoe says : "Doctors' Commons was a name very well known in Holland, Denmark and Sweden, because all ships that were taken during the last wars belonging to those nations on suspicion of trading with France were brought to trial here : which occasioned that sarcastic saying abroad that we have often heard in conversation, that England was a fine country, but a man called Doctors' Commons was a Devil, for there was no getting out of his clutches, let one's cause be never so good, without paying a great deal of money."

the ill-paid tribunal were those who had the time to spare, so that the decrees of men of the greatest talent and experience were reviewed by persons of whom the most part had not succeeded in getting into much practice themselves. Someone bitterly said it was the same as if eight junior barristers practising at Sessions were chosen to sit in judgment with the King's Bench judges in criminal appeals in order to nullify their opinions.

Sinecures were rampant. In 1829 the principal registrars of the Prerogative Court, of whom one was a minor, received £9,000, but they performed their duties through deputies to whom they paid one-fourth of the sum. This system may partly serve to account for the traces of singular carelessness on the part of subordinate officials. To comply with the Canons, surrogates must be appointed in the presence of the registrar of the court, his deputy, or a notary public. The official proof of the appointment is what is known as the Assignation Book. One Verelst, was indicted for committing perjury before Dr. Parsons, surrogate for Sir William Scott, on an application for a marriage licence. When the Assignation Book was produced it was seen that the space where the name of the registrar or his deputy ought to have appeared had been left blank, with the result that, although Dr. Parsons had been a surrogate for twenty years, his appointment was treated as a nullity and the defendant escaped punishment. It was this same Dr. Parsons who refused the licence to the Prince of Capua referred to in another place.

Claiming to deal with any matter affecting good faith,

the Church Courts at one time made inroads on the common law and were even prepared to deal with ordinary questions of debt, but at the beginning of the last century the jurisdiction of the Commons covered a heterogeneous conglomerate made up of matters affecting the conduct of clergymen, probate, divorce and admiralty business, immorality, defamation, brawling and smiting on consecrated ground, and other things of a semi-ecclesiastical nature. The weightiest points in international law alternated with the affairs of the parish pump, and both were debated with equal learning, prolixity, decorum and expense.

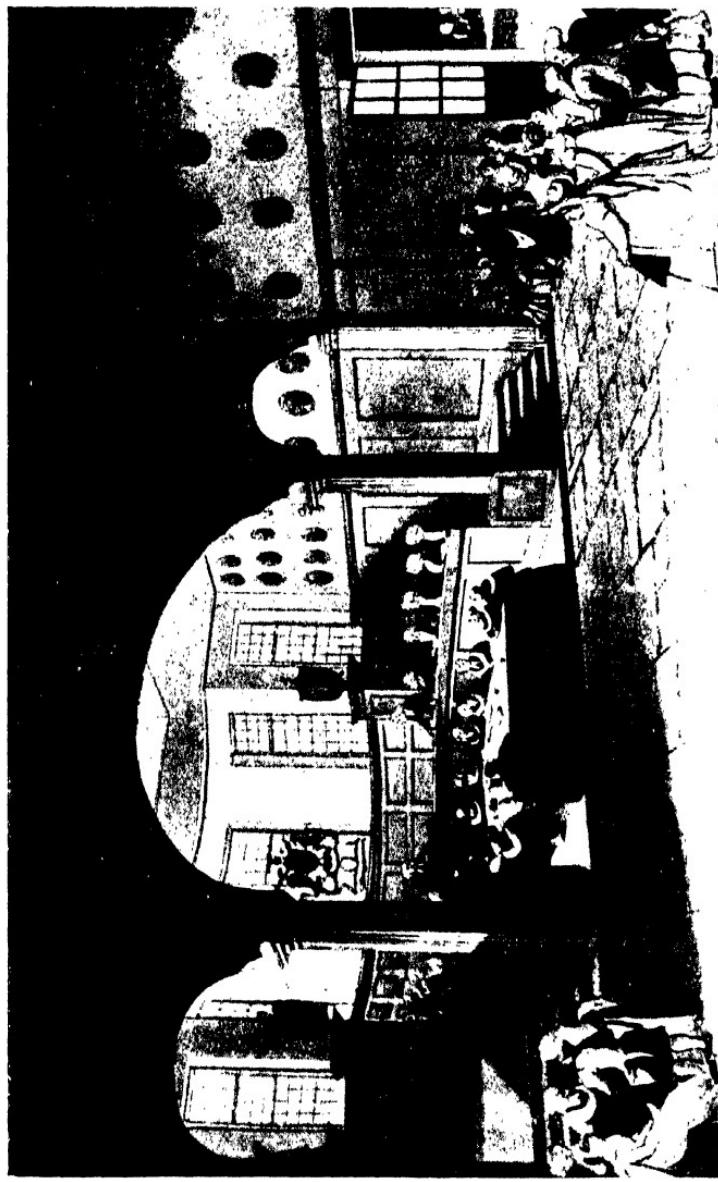
In 1805 a dance was in progress in the public Bath Room at Plymouth, and Mrs. Russell, a married woman, stood up to join in one of the sets. One Bentham, was there with a young lady, and he felt it his duty to warn her she should not associate with Mrs. Russell, as it was rumoured there had been some impropriety of conduct on her part in the Isle of Wight. Words ensued with Mrs. Russell's husband, the Port-Admiral sent a naval officer to make enquiries, and the upshot was a suit for defamation in the court of the Dean and Chapter of St. Paul's. That court used to meet in the chapter house, recently converted into a bank ; it had two or three cases on its books at a time at the most, and the nominal judge never sat, his surrogate, Dr. Parsons, acting for him. In theory it still exists, but it has long ceased to entertain litigation.

A suit of this kind could only be brought in a Church Court, for up to 1891 no action could be maintained

at common law by a woman in respect to her character unless she could prove what is technically called special damage. All she really wanted was an apology, but somehow the case went on, and there were appeals on petty points of procedure to the Arches and the Delegates, until finally in 1812 the defendant was "dismissed from all further observance of justice," no costs on either side. After seven years worry the lady was seven years wiser, and her husband had nearly seven hundred pounds to pay. He declined to do it. "There was no bill ever made out," his proctor tells us, "and in point of fact I never received all the disbursements I incurred. It became so very expensive, and the feelings of the lady's husband were so strongly excited, particularly at the conclusion of it, that for sympathy, and with the view of appeasing those feelings as much as possible, I waived all claim to my costs."

If the case had been won there would have been very little in it, for ecclesiastical courts had no power to award damages. They proceeded by way of penance and excommunication. Walter Whitfield was sentenced "to do penance in a white sheet on three successive Sundays in St. Martin's-in-the-Fields," James Wheatley to do "a solemn and public penance in a linen cloth with a paper writing denoting his crime fixed on his breast in the usual manner." In one defamation case a woman was expected to do penance in Salisbury Cathedral ; many hundreds of persons flocked to see it, and it became so difficult to preserve order that it was deemed politic not to proceed : "she was such a violent woman





(From a print in the Author's possession)

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that the proceedings in the ecclesiastical court were given up, and as she had committed an assault she was indicted at the Sessions and imprisoned in the house of correction at Devizes." In another case the offender was directed, upon twenty-four hours' notice to the complainant, to repair to the vestry, and in presence of the officiating minister, one of the churchwardens, and such other persons as the complainant brought with her, "audibly and distinctly make the following confession, viz : to the effect, that he had defamed the complainant, that he asked her forgiveness and that he would not again offend in the like manner." He made a game of the business by sending his notice, signed "yours affectionately," to the complainant by the town-crier, and when he did his penance in the vestry there was nobody present, as he had selected a time when service was proceeding in the church. He was brought before the court again, mulcted in a tidy sum for costs, and enjoined to repeat the performance in accordance with schedule.

If the court was defied, excommunication would follow, the sentence being pronounced by the judge and published by the parson on Sunday in the parish church. An excommunicated person could not bring an action or be a witness, could not act as an attorney, was turned out of church by the churchwardens, and not allowed Christian burial. In this connection a great judge got himself into very hot water. There was a suit by a wife for divorce, and the husband, being a minor, had to appear by his guardian. It was purely a

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formal matter, and his father, an attorney named Beau-rain, was directed to act as guardian. He refused to do it, whereupon he was excommunicated forthwith without being first cited to appear. This was a thing the court had not the right to do. He was rendered unable to follow his profession, and his creditors haled him to a debtors' prison. First begging and then threatening, he collected one hundred and fifty pounds from the judge, and when he could get no more he sued him in the King's Bench for false imprisonment. There was a verdict for forty shillings damages, but the jury added this rider : "They beg leave to assure the Lord Chief Justice that by this, their verdict, they do not mean to attach the slightest impeachment on the most respectable character of Sir William Scott." Scott was Lord Eldon's brother, and became the equally famous Lord Stowell. He made two mistakes in his life. The other one was his second marriage. He married a woman whose acquaintance he made when he was trying her son at the Old Bailey for enticing sailors from the Royal Navy, to man his own yacht. He sentenced the son, and married the mother. The brilliant exponent of matrimony learned to regret it, and the dining hall in Doctors' Commons became his haven of refuge from lectures at home.

If excommunication did not have the effect desired, hardened sinners were "signified" to the Court of Chancery, and then they were put in prison and remained there until they made submission. A poor woman who applied to another "an opprobrious epithet very frequently

bandied among the vulgar " lay in prison for years until her case was brought up in the House of Commons. Frances Barlee, after a year in Ipswich gaol, for not returning to her husband, tearfully pleaded that she did not know what had become of him, that she was in want of the common necessities of life, being reduced to the allowance of bread and water, and a small quantity of cheese, and her apartment being unceiled and open to the prison roof, she would never survive another winter. The High Sheriff hastened to say she was a liar.

The Rev. Dr. Clarke, Rector of Great Waltham, committed in 1824 for non-payment of costs, was still in prison eight years later.

A statute of Edward VI punished brawling by exclusion from services in church, smiting by excommunication (coupled, after 1813, with imprisonment in place of civil disabilities), and malicious smiting by the loss of an ear or branding on the cheek with the letter F. A case under the statute in 1819 was deemed of sufficient importance to occupy thirty-two pages of print. It appears that one, Scales, being indignant at the presence of an attorney named Bilton in a vestry-meeting at St. Mary's, Stratford-le-Bow, shouted out that they were not going to be dragooned by lawyers, and that the churchwarden was unworthy to fill the chair. This being the brawling complained of, the court held that the expressions did not fall within the statute. However, it was further alleged that at the conclusion of the meeting Scales seized the man of law "by the arm and back, forcibly and violently pushing

against him, upon which Bilton sat down ; when Scales again laid violent hands on him by seizing him by the collar of his coat and clasping him round the waist and arm, and dragging him, and placing and driving his knuckles against Bilton's face, and endeavouring by force to put him out of the vestry-room, to the great offence of the persons assembled and in violation of the statute, and of the laws, statutes, canons and constitutions ecclesiastical of this realm." Here was weighty matter indeed with which the court must deal, however painful it might be, and Scales was pronounced excommunicate, with imprisonment for seven days and the costs of the suit, the King's Advocate intimating that the imprisonment would not be carried into execution.

It seems strange that a judge like Dr. Lushington wasted time over such trumpery.

An interesting section of these suits promoted "for the soul's health and the lawful correction of manners" dealt with the punishment of immorality. The James Wheatley mentioned above was a Wesleyan preacher who had achieved a reputation for gallantry. The eighteenth century was not particularly commendable for morals, and Doctors' Commons ought to have found this department extremely profitable, but as a fact such prosecutions were few and far between, and mostly concerned glaring offences within the prohibited degrees. The courts could only enjoin penance for the past, and better behaviour for the future, of course, with costs ; and when penance became ridiculous a practice grew up of excusing it upon alleged considerations

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of age and health. Probably the very last case of the kind came before the Consistory Court of Chichester in 1856, when Widow Elizabeth Tonsett was charged with cohabiting with her late husband's father, and going through a fraudulent form of marriage with him in London. Sir Robert Phillimore pronounced the marriage void, and, while not inflicting the penance, admonished the parties to live separate and apart in different habitations, warning them that disobedience would be followed by sentence of excommunication and other consequences.

The worst kinds of incest are now dealt with in the criminal courts under a recent statute, but ordinary immorality goes to-day unpunished by the law. Ecclesiastical Courts still retain the power to do it, but public opinion is against the exercise of the jurisdiction. Lord Penzance said in 1876 that a recurrence to the punishment of the laity for the good of their souls would not be in harmony with modern ideas, or the position which ecclesiastical authority now occupies in this country. He added that in his judgment, "the enforcement of such powers where they still exist, if they do exist, is not likely to benefit the community."

The judges in Doctors' Commons were great jurists ; never were there any more learned ; the procedure was hopelessly archaic. In the days we are speaking of the parties concerned in an action in any court of justice were disqualified from giving evidence in support of their case, but in Doctors' Commons there was no jury and there was no oral evidence. Each side produced

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its witnesses before an examiner, who took them privately one by one and extracted all he could about the case : then he put a series of questions prepared beforehand by the opposite party on an expectation of what they might say which were of the nature of shots in the dark, and wrote down the answers without comment. These depositions so framed were all the court had before it. It took the examiner a week to obtain the information we get now in a day, and at a maximum of inconvenience and expense. Truth will sometimes out even in an affidavit, and the solicitor to the Bank of England in 1832 was convinced that this mode of eliciting it was eminently satisfactory and that *viva voce* examination was the very worst method, a trial of the skill of counsel and the nerves of the witnesses, rather than a good mode of getting at the truth ! One can hardly wonder that when Dickens came to the Commons to earn his living as a reporter, he described the place as a "sleepy old nook," and its inhabitants as a "cosey-dosey, old-fashioned, time-forgotten, sleepy-headed family party." If the present Divorce Court proceeded on these lines most of the suitors would be dead before judgment.

One cannot imagine how the machinery worked in the network of similar courts all over the land, where the judges were mostly local clergymen. One of them naïvely informed a Royal Commission : "In every case that comes before me I ascertain the usual course of proceeding in such a case, but I cannot afterwards retain it in my mind. I am assured we have very

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good precedents in our court, from which I have never deviated except in the hope of saving time and expense ; in one case in which I did so deviate, although I gave a decision in the Latin words of Oughton, I was too precipitate, and there was an appeal to the Arches, which was allowed." He added that at the time he was made a chancellor he had never read any ecclesiastical law.

Here and there traces of the forgotten ways may yet be found, and an old-world air still clings round the formal proceedings in Bow Church, Cheapside, to confirm the election of a bishop of an ancient diocese. Most of these courts have long been swept away, and many exist only in name. Their jurisdiction over the laity has gone altogether, and they are restricted to such matters as concern the churches and those who serve therein. The College of Advocates is dissolved, its buildings are down, and now not one of the Advocates or Proctors survives.



**XV**

**MARRIAGE AT SEA**



## XV

### MARRIAGE AT SEA

A RECENT book written for the guidance of English shipmasters lays down that if the captain of a Channel steamer were invited to marry two of his passengers whom he did not know, he should refuse, and that even if a parson on board were willing to perform the ceremony, he should not allow it. But that in the case of a sailing ship proceeding from England to the Yukon round the Horn, if there were two families on board personally known to him, and a man of the one family, when they were a couple of months out, informed him that he wished to marry a woman of the other family in, say, a month's time, with the assent of both families, he would be justified in performing the ceremony. Especially would this be true if one of them had an aged or invalid parent who strongly desired to witness the marriage, and was unlikely to live to the end of the voyage. There may surely be cases, he says, where it would be unreasonable, and possibly exceedingly cruel, on the master's part to refuse to perform the ceremony : he must draw the line for himself between what is reasonable and what is not in any case which falls his way. He then qualifies his statements considerably by adding

that, as the authorities do not recognize the right or competence of the master to perform marriages, and his official log-book contains a warning that they would be illegal, he had better have nothing to do with them. The law so laid down is difficult to follow, and the difficulty arises from a curious chapter in our legal history.

It is a widespread notion among seafaring men that the captain is entitled to perform the marriage ceremony : in former days he sometimes undoubtedly did, and no one questioned his right. Admiral Markham records a marriage in 1815 on an East Indiaman between James Chadwick and Josephine Chapuis by "good Thomas Haviside," the captain of the ship. There is also a section in the Merchant Shipping Act which directs the master to enter any marriages on board, together with the names and ages of the parties, in the ship's log. The subject fascinated the late William Clarke Russell, and he wrote a novel round it. He makes his hero run away with his infant sweetheart from her school near Boulogne because her relations are opposed to the match. They set sail for England on his yacht, but the vessel is dismantled by a storm in the Channel, and they are taken on board a steamer outward bound. The captain considers the position equivocal, and that they must be married forthwith to satisfy Mrs. Grundy, whereupon he claps on the irons of matrimony. Mr. Russell was a little doubtful whether he had got his law right, and he concludes by saying that the sooner the surrounding obscurity is cleared up the better. Novelists are seldom safe guides where matrimony is concerned. Lord

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Campbell once remarked of them : “ These expounders of the law always make a marriage by a sham parson void, contrary to the opinion of Lord Stowell and the canonists ; and they give validity to marriages in masquerade when the parties are entirely mistaken as to the persons with whom they are united—marriages which would hardly be supported in the ecclesiastical courts in a suit of jactitation or for restitution of conjugal rights.” I have noticed myself the casual way in which they make people get licences in Doctors’ Commons which apparently entitle them to be married anywhere they like.

The propriety of a marriage at sea must be determined entirely by the law which an Englishman carries with him when he leaves his native shore. When he reaches a country which possesses a local law he may marry in accordance with such local law, provided he is not forbidden by the law of England to do so ; he is so forbidden, for example, if the local law recognizes polygamy, and the union of an Englishman with a woman of the Baralong tribe in Bechuanaland according to the customs of the tribe was set aside on that ground. If there is no local law, and no one has been appointed by the Secretary of State to act as a marriage officer, his position remains the same as it was during the voyage. He has left behind him all our ordinary legal machinery, judges, justices of the peace, and quarter-sessions, and so forth. He is not bound by any of the statutes relating to marriage which require the ceremony to take place in church or before some civil officer authorized to record the contract, for these all relate solely to marriage in England itself,

and cannot have, and are expressly stated not to have, any operation outside this country. What he is bound by is the common law of marriage which prevailed up to 1753, the date of Lord Hardwicke's Act, the law which those who sailed in the Mayflower took with them into the West. The nature of that law was the question raised in an extraordinary case in the middle of the last century.

A man named Millis was married in Ireland by a regular Presbyterian minister according to the usual form of the Presbyterian Church in Ireland. There seemed to be nothing remarkable about the marriage, for hundreds of thousands, particularly in Ulster, had been married in the same way without any suggestion of illegality. Two years later he came to England and married another woman, and was then indicted in Ireland for bigamy. He raised the defence that the first marriage was void. He contended that marriages in Ireland must always be solemnized by a priest in holy orders, a description which would not apply to a Presbyterian minister. The importance of this for us lies in the fact that the law in Ireland had not been altered since 1753, that is to say, the old English common law was still in force, the law which must even now govern every travelling Englishman until he comes within a foreign jurisdiction.

The case was argued in the Irish Court of Queen's Bench, comprising four judges. They came to a deadlock, two maintaining that the prisoner's contention was right, two that it was wrong. The only thing that could

be done was to take the case to the House of Lords in England, and for that purpose one of the judges who considered the Presbyterian marriage valid formally withdrew his judgment, so that there might be an apparent decision to appeal from, although in reality there was none. It is customary in criminal cases to give the accused every possible indulgence, so the judgment withdrawn was one of those in favour of a conviction.

The law lords who sat in our supreme court of appeal were six in number. It must be admitted that their deliberations were conducted with the utmost care, and before expressing their own opinions they took those of the judges of England, the report of the proceedings occupying no less than 374 printed pages. At the end there was another dead-lock, three one way, three the other, and again no decision. Such a result is very rare indeed, but when it occurs the rule is that the decision of the court below is adopted as the decision of the Lords themselves, and that was accordingly done. It was declared that by the law of England from the time of the Anglo-Saxons down to 1753, no marriage was valid at which a duly ordained priest, or at the least a deacon, was not present, and Millis had not committed bigamy. It was lucky for Millis, who escaped the punishment he deserved, most unpleasant for the numbers of people who had married in the Presbyterian way, very awkward for us now. The judgment has finality, but it has no other merit. Based upon a fiction of a finding by an Irish court, it pronounced the English law of marriage to have been always different from that of the rest of

Europe : all that had ever been required anywhere else up to the Council of Trent was the free consent of the parties to be married. No one had observed this remarkable insular peculiarity of ours before, and no one is likely to believe it now. As has been well said, "if the victorious cause pleased the Lords, it is the vanquished cause that will please the historian." The decision was absolutely wrong, a conspicuous instance of a complete break-down of our legal system on a matter of the first magnitude. But we were saddled with it. Immediately after the judgment was delivered a marriage which had been performed at Beyrouth by an American missionary who was not in orders had to be declared void. Statutes were passed at home and in several of the colonies to legalise past marriages which were affected, but little was done to relieve persons leaving England in the future.

Some years ago a marriage was brought into the Divorce Court which had been solemnised on a man-of-war lying off Cyprus by the chaplain of the vessel, and it was of course held valid. Men-of-war have since been provided for by an Act of 1892, which sanctions marriages before the commanding officer or other authorised person when the ship is on a foreign station. But on a merchant ship it is still necessary to find a priest. The captain will not do, and it will generally be difficult to find a priest, unless the parties have had the forethought to bring one with them.

Only one exception has been suggested to the rule. Lord Campbell has pointed out that cases of necessity



*Lord Stowell*  
*(See Chapter XVII)*

*(Facing page 192)*



must arise when the services of a minister in holy orders are unattainable. This was the position on Pitcairn Island when the mutineers of the Bounty settled there. If their marriages had had to wait for a priest, there would have been none. George Adams, the last of the mutineers, used to perform them ; thirty-four years from the date of his landing a naval captain was asked to read the marriage service over him and his wife again, and it was forty years before a priest set foot on the island. No one questions the right of ship-wrecked persons to marry when they are cut off from the rest of the world, but they ought to repeat the ceremony with proper formalities when they are restored to civilisation.

A transport was sailing from Cork to Sydney with troops. A woman was discovered on board, and the colonel, after reading a report of the circumstances relating to her discovery, ordered her to be married to one of his men. The civil commander of the ship read the service, and the colonel signed the regimental registration book as a witness. This marriage was considered in an Irish court, as the ownership of some property in Ireland turned on it. It could only have been valid if it had been held a case of necessity, but the court declined to take that view.

One of the judges observed :—

“ For the purposes of morality the officers may have deemed it right to celebrate a marriage which might afterwards be rendered complete when the parties arrived at their destination. But where was the necessity ?

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If the vessel had been sailing from Cork to Gibraltar, instead of to New South Wales, she would have been going on a voyage of perhaps a fortnight's duration : the only difference between the case which actually occurred and that which I have supposed, consists in the length of the voyage : and the plea of necessity would apply in the one case as well as in the other. There was nothing in the position of the parties to absolve them from compliance with the law."

It is rather a remarkable thing that no more marriages at sea appear to have found their way into our law books. What is the kind of necessity which will justify the ministrations of the captain has never yet been ascertained. Neither has there been any case in our books of marriage on a Scotch ship :—two Scotch people marrying Scotch fashion on a Scotch ship would probably be making a thoroughly good marriage of the recognised irregular kind, and if one of the parties to such a marriage were English, it is submitted that it would not be an infringement of our law.

## **XVI**

### **MARRIAGE CUSTOMS**



## XVI

### MARRIAGE CUSTOMS

OUR MARRIAGE service is most ancient, and though the centuries have left their mark upon it, it remains a curious casket of antiquities. The three parts were once distinct ceremonies, the public betrothal and dower, and the actual marriage, taking place at the church porch, only the last, or benedictory, portion being conducted in the chancel. The betrothal sometimes was gone through months before, and the words of dower had a practical meaning for the wife which no longer attaches to them. Betrothal constituted a contract of which the ecclesiastical courts were ready to enforce the performance. Even in 1747, upon the ground that the plaintiff would be liable to the law if she married another, a prebendary of Worcester was mulcted in seven thousand pounds for breach of his promise, a sum which compares favourably with the ten thousand pounds paid by Earl Cairns to Miss Fortescue a few years ago, though that was the highest amount ever awarded until the other day.

Time was when the use of the service was absolutely prohibited. Just as when Queen Victoria came to the throne all marriages, except those of Quakers, Jews, and members of the Royal Family, had to be solemnized in

church by a clergyman, so, at an earlier date, marriage was for a short period permitted only in civil form. The Long Parliament set up civil registrars in each parish throughout England. It was their business to receive all notices of marriage and publish them on three Lord's Days then next following, either at the close of the morning exercise in the public meeting place commonly called the church or chapel, or in the market-place on three successive market-days between the hours of eleven and two. The marriage followed, before a justice of the peace, at some convenient hour of the day according to a set form of words, whereby the man promised to be a loving and faithful husband, and the woman a loving, faithful and obedient wife. No ring was used then, as it was deemed mere superstition.

This system was compulsory for two years only, but it lasted as an alternative to the Church form up to the Restoration, and scornful references to "marriage in the Presbytering way" abound in the parish registers. However, it was more impressive than civil marriage is now.

The man who married a wife formerly married her debts as well, but there was a popular belief that he escaped this liability by marrying her in her shift, as then he took nothing with her. Dr. Murray's Dictionary explains, for the benefit of the uninitiated, what a shift precisely was : "In the seventeenth century 'smock' began to be displaced by 'shift' as a more delicate expression, and in the nineteenth century the latter has, from the same notion, given place to 'chemise.'" A man was on his trial in Scotland for stealing some

## MARRIAGE CUSTOMS

garments described in the indictment as shirts, and he proved they were shifts : "if the expression employed had been 'sarks' it would have covered them both," said the judge, and he directed the acquittal of the prisoner. In 1774 a widower who lived in Yorkshire and was thirty years old, married in this way a widow of seventy, "but the weather being very severe threw her into such a violent fit of shaking as induced the compassionate minister to cover her with his coat whilst the marriage was solemnised." So, again, at All Saints, Chiltern, Wilts, "John Bridmore and Anne Selwood were married October 17, 1714. The aforesaid Anne Selwood was marryed in her smock without any clothes or headgear on." In fact a number of these marriages are recorded between 1547 and 1844, all of them in country places, except one entry in a Fleet marriage register, which states, "the woman ran across Ludgate Hill in her shift, 10s 6d."

"Kiss me, Kate, we will be married o' Sunday"—one can understand that when marriage was forbidden for reasons of religion during nearly two-fifths of the year, it would have been hard to leave out Sundays as well : on the contrary, it was the popular day for a wedding, until the triumph of the Puritans. Old times and seasons have been forgotten long since, though maybe they are partly responsible for the lingering belief that "those who marry in May will rue the day"; but Sunday is apparently again growing into popularity, in spite of the plain inconvenience to hard-worked parsons. Marriage was preceded usually by banns, until in the eighteenth

century the polite world voted them vulgar and obtained drawing-room licences instead. For the ordinary run of people the rule was that the ceremony took place between eight o'clock and noon, one reason being that the parties and their company were more likely at that time to be sober. Bishop Coverdale upbraids those who came to the church “ half-droncke, regarding neyther the prechynge nor prayer, but stonding there only because of the custome.” One o'clock was the time when the whole world went to dinner, and it was not till modern days that the banquet was mis-called a breakfast.

The words of the troth given by the woman were printed by Wayland in 1554 thus :

“ I, N., take thee, M., to my wedded husbande, to have and to hold fro this day forwarde, for beter for wors, for richer for poorer, in sikeness and in hele ; to be bonere and buxum, in bedde and at the borde, till deth vs deparate, if holy church it woll ordeine, and thereto I plight the my trouthe.”

There is music in them which still lingers in the form which we all know ; and if the present craze for changing everything has its way we shall lose a link which binds us to our Anglo-Saxon forefathers.

“ With this ryng I the wed, and this gold and silver I the give ”—so ran the ancient formula. In the case of a maiden both her hands would be bare, but widows wore a glove on the right hand. Whether the ring was placed on the right hand or the left is a debated point. It was the right in some parts of the Continent, and if the same rule obtained here, the alteration from right to left

is an odd product of the Reformation. Whichever hand it was, the ring finger was always the fourth. The ring was put on the thumb first and then on the other fingers in succession, reaching its home on the word "Amen." Not necessarily its permanent home, however, for it was sometimes worn on the thumb afterwards. It appears there in pictures of the time of Elizabeth, and the practice had not died out when George I was King. The legend that the fourth finger was chosen because a vein ran thence to the heart, which is solemnly stated in the Salisbury service-book, seems to indicate that it must have been the left hand. In England preference was always shown for a plain ring, and one of the nice things about Queen Mary is that when she married Philip of Spain, she told her Council it was her will to be wedded with a plain hoop of gold like other maidens.

The significance of the gift is variously explained. It may be a symbol of constancy, a token of authority, or a relic of marriage by capture ; but the simplest theory, taking it in conjunction with the gold and silver, is that it was an earnest of the dowry. One reads that it is, or at all events was, a practice in Cumberland for the bridegroom to take up the money again, give the accustomed duty to the priest and clerk, and pour the remainder into a handkerchief which he handed to the bridesmaid to mind for his wife.

After the performance of the religious rites within the choir which concluded the ceremony, the wedding party partook of the bride-cup, and then issued forth to a riotous bridal feast. One fee that it would be better not

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to forget at Northwich in Cheshire was that of the senior boy of the Grammar School, entitled by charter to the same fee as the clerk, or alternatively the bride's garters.\* The wedding presents were sometimes laid on a table inside the church, or a collection might be made at a bride-ale in the nave, or in the feast-house adjoining. The expenses of the festival were great, as it might go on for as much as ten days, and there were the drums and fiddles to be paid for, and the presents to the guests, not to mention the favours, gloves and scarves, rosemary, roses and other gauds. Lists of the presents are preserved in the parish registers here and there, and if they were given conditionally, the terms of the donation are set out. Among the things the bride was accustomed to receive were scissors, known as a "pair of knives." She was to cut the thread of love with them if her husband's conduct displeased her, but when at last it dawned on people what a ghastly notion it was, they came to be regarded as unlucky. The cost of a regular wedding was undoubtedly one of the reasons why clandestine marriages came to be popular ; even to-day, when a church marriage need only cost a few shillings, many persons resort to a

\* Burn's History of Parish Registers, p.164. The present headmaster, Mr. F. C. Weedon, states that the custom has long since fallen into disuse. In 1823 a considerable sum raised in this way was expended in celebrations on Guy Fawkes' Day. The demand, exquisitely written on gilt-edged pink paper, presented to a bridegroom on 5th October, 1830, and now in the possession of Mr. John Weston, of Northwich, reads as follows : "It being an ancient custom with the Scholars at the School (whenever a respectable marriage takes place at the Church) humbly to solicit from the newly-married couple what is termed Garter Money, or the Bride's Garters : We hope we shall not offend by following up the old rule."

register-office under the impression that it must be cheaper there.

The bride-cake has a curious history. In the days of the Tudors it was customary to scatter wheat over the happy pair. The wheat gave place to biscuits, and the biscuits to little cakes. A time came when the cakes were bound together with icing, and on the structure being raised above the lady's head, the contents descended upon her in sweet cascade before being scrambled for by the guests. The layers of almond paste running through a properly built wedding-cake are derived from the days when all the little cakes within it were separated by the succulent mixture. At Allendale, in the middle of the last century, pieces of the cake were still thrown at the bride as she entered the house after the wedding. It is believed that in Scotland at the present day the mother-in-law sometimes breaks a piece of oatmeal cake over her, which, anyhow, is to be preferred to the conduct of the mother-in-law in some parts of India, for she takes the bridegroom by the nose and drags him to the marriage bower. The biscuit still flourished in London in the eighteenth century. One of the witnesses in an Old Bailey trial in 1731 told the jury : "The prisoner was married at my house in the Fleet to Mr. Humphreys by Mr. Mortram, a clergyman ; I gave her away, and saw the ring put upon her hand, and broke the biscuit over her head."

We must pass lightly over the final ceremonies\* in

\* Those who are curious about these matters should read the account in 11 House of Lords Journals, p.770, of the wedding in 1696 of Hannah Knight, who was not ten years of age.

## MARRIAGE A LA MODE

the upper chamber after the dancing was done, when the stocking was thrown and the priest presented the benediction posset. Charles I displayed a delicacy in advance of his generation when he evaded these customs by locking the door. Really, the absence of privacy was remarkable, and the new-married couple had hardly any time to themselves for weeks. Now they escape from their friends at the earliest moment after the reception, but then they remained at home. The honeymoon was only invented towards the middle of the eighteenth century.

When the slipper is hurled after the carriage to-day we think it is for luck, but the learned declare that it means something else. The bride, who was formerly in her father's power, is transferred to her husband, and the shoe is the symbol of authority. At one time he used to lay it on her head, and it was set up as an emblem of jurisdiction in the bridal chamber. The twentieth century bride has resolved, so we are given to understand, not to be bonere, that is to say, obedient to her lord, any more, and the slipper is now a downright insult.

## **XVII**

### **MARRIAGE BY FRAUD**



## XVII

### MARRIAGE BY FRAUD

MR. JUSTICE BUTT, who was a judge of the Divorce Court in the 'eighties, once remarked that the courts have always refused to recognize contracts as binding to which the consent of either party has been obtained by fraud or duress, and that the validity of a contract of marriage must be tested and determined in precisely the same manner as any other contract. English law has never been remarkable for accurate terminology, and marriage is persistently spoken of as if it were an ordinary contract instead of being in a class by itself ; but Mr. Justice Butt's assertion that consent obtained by fraud makes marriage invalid goes very wide indeed of the mark. Any person who has been induced to enter into an ordinary contract by fraud may set it aside, but if there are fraudulent circumstances connected with his marriage he can only set that aside if he is able to show that he really never consented, although he appeared to do so. The real question for decision in these cases is whether the one party in marrying the other was giving expression to his or her own will. If the answer is in the affirmative it is immaterial how the marriage came about.

The necessity of a genuine consent is well brought out

#### MARRIAGE A LA MODE

in the quaint report of a criminal trial in the days of Charles II, arising out of the marriage of a girl named Sarah Coxe.

"The said Sarah being an orphan and having £1300 for her portion, was by force and swords drawn at Islington taken away against her will by the said Roger Fulwood and Richard Bowen at eight of the clock at night, put into a coach with the said Roger, brought to the Strand bridge, and thence carried by water to the Bishop of Winchester's house. The next day, upon pretence of showing her the house, she was brought into the chapel, and being there in much fear was married to the said Roger Fulwood in the presence of the said Lady Fulwood his mother, the said Richard Bowen, and divers others." Evidence was given that after the ceremony she gave orders for dress to a tailor, and that the usual consequence of marriage followed. But the judges "all held, although there was not a marriage *de jure*, because she was in such fear (as she affirmed on her oath) that she knew not what she answered or did, yet it is a marriage *de facto*, and is felony within the statute ; wherefore judgment was given that they should be hanged." In other words, the judges declared that the marriage was of no legal effect as regarded herself because she did not mean what she was constrained to say.

Anyone who is frightened into marriage by fear of grave injury to herself, or possibly to others, and who says in effect "I marry you not because I wish, but you make me," has good grounds for coming to the court

for relief. The case of Miss Wharton (whose abduction by the Duke of Argyle's brother in William III's reign resulted in the execution at Tyburn of Sir John Johnston) must be explained in this way, as well as the case of Wakefield and Ellen Turner, which has been already related. There are a number of cases where a girl has consented for fear of being shot.

Similar matrimonial misfortune has frequently befallen persons of weak mind. There was an Earl of Portsmouth at the beginning of the last century who was sufficiently irresponsible to be in the constant company of a medical attendant. He was taken to London by him for a change, and handed over to the care of his trustee, who happened to be a solicitor. Within forty-eight hours the solicitor was busily preparing a marriage settlement, and before the week was fully out the Earl was married to the solicitor's elderly ugly daughter. Lord Stowell subsequently had to deal with the case, and the marriage was pronounced null and void. He stated that fraud and circumvention afforded ground for his decision, but the real basis of it was that the Earl did not mean what he said and did.

A girl of the name of Hannah Wilkinson was married in the same way. She was over twenty-one, but the Lord Chancellor having regard to her mental condition, although she was not certified as a lunatic, had appointed her father and others to act for her as if they were her guardians. Her cousin surreptitiously secured a marriage licence, and obtained permission to take her to see her aunt at Hoxton. Instead of that, he took her to Stepney

and married her in the parish church. "Miss Wilkinson, when required to say 'I will,' said 'No,' till prompted by the clerk and told to use the formal words : when the parties retired to the vestry after the ceremony to sign the entry, Miss Wilkinson took off the ring, and threw it down, saying she was not married, her papa would be very angry, and it was all a mistake. Her language and behaviour having convinced the curate that she was not in a fit state to be a party to a contract of marriage, he sent for the rector in order to determine what steps were proper to be taken, but in the meantime the parties signed the register and quitted the church." This marriage was not permitted to stand, but was set aside for fraud and circumvention practised on a person of weak mind, which again means, being properly interpreted, absence of consent.

Incapacity to consent may also be brought about artificially. If three or four persons combine together to make another intoxicated and get him married in that perverted state of mind, no court would uphold the transaction.

The most remarkable story of involuntary marriage of which I am aware was made public in 1896. A girl of seventeen was taken for a drive by her mother. The carriage set them down at St. Mary Abbot's Church, Kensington, and there the bridegroom, the clergyman and the licence awaited them. Her mother told her it was not a wedding, but a form of betrothal which she wished her to go through. She said she had no wish to be engaged, as she did not know the man sufficiently. It

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appears that she had known him three weeks, and that they had once been in the same party at the theatre. He told her to do what her mother told her, and her mother said it would be all right. She had never read the marriage service or attended a wedding, and she actually believed that what followed was not a ceremony of marriage. It seems extraordinary that a girl of her age, wealth and education should have been so silly, but the court accepted her account. She said she had a faint recollection there was a clergyman there, but she was in a dazed condition and remembered very little about it. There was a ring, but she threw it away after she left the church. She was told not to tell her father or anyone else about it, and the bridegroom went away to South Africa directly afterwards, and she heard nothing from him for years. Four years later, when she had married someone else, he wrote to claim her, and then she appealed to the court. The marriage was pronounced a nullity on the ground that "she did not consent to marry the respondent, but went through the ceremony as one of betrothal, and in so doing was to such an extent under the influence of her mother and the respondent that she was not a free agent."

There is a species of fraud which may have been possible in England years ago and does occasionally happen even now in other parts of Europe. It occurs when, to use the words of an old writer, "I have thoughts of marrying Ursula, yet by my mistake of the person I have married Isabel." This seems to be what Lord Campbell was thinking of when he said that a "marriage

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in masquerade " was not binding, and one presumes that a heavy veil and semi-darkness would be necessary parts of the business. There would be no real consent in such a case.

But if the fraud relates, not to the identity of the person married, but to some misrepresentation of quality, as that the man is a Lord, or the woman is an heiress, the marriage will stand. Lord Stowell laid this down in a brilliant passage, " Suppose a young man of sixteen, in the first bloom of youth, the representative of a noble family and the inheritor of a splendid fortune : Suppose that he is induced by persons connected with a female in all respects unworthy of such an alliance to contract a marriage with her after the publication of banns in a parish church to which both are strangers : I say, the strongest case you could establish of the most deliberate plot, leading to a marriage the most unseemly in all disproportions of rank, of fortune, of habits of life, and even of age itself, would not enable this court to release him from chains which, though forged by others, he has riveted on himself. If he is capable of consent and has consented, the law does not ask how the consent was induced. His own consent, however procured, is his own act, and he must impute all the consequences resulting from it, either to himself or to others whose happiness he ought to have consulted, to his own responsibility for that consent. The law looks no further back."

The man who means to act upon representations about family or fortune should verify them by his own enquiries ; the law presumes that he uses due caution in

a matter in which his future life is so materially involved, and it makes no provision for the relief of a blind credulity, however it may have been produced. Reference has been made in a former chapter to the penalty paid by Beau Fielding for an act of greedy folly. The only other instance in which a contrary doctrine seems to have prevailed occurred recently in Scotland. A lady replied to the following matrimonial advertisement :—“ Young English gentleman (30) with large country estate and mansion thereon in England, wishes to meet young lady fond of country life and sport generally. Must have at least five thousand pounds or a fair income. Replies, with few particulars, treated in confidence.” The advertiser was a betting tout and the bankrupt son of a postillion at Bedford. He told the lady he was Walter Erby Hamilton, of Foxhall Park, Letterkenny, County Down, Ireland. They were married in Scotland by way of present consent and visit to the sheriff. After the bridegroom had been sentenced to six months for the false declaration he made when the marriage was registered, the wife applied to the Court of Session for a decree of nullity, and was fortunate enough to obtain it. The case was undefended.

The crucial test is chastity. Whether there be a moral obligation on those about to marry to make full disclosure beforehand is a question on which much might be said, but we are only concerned to enquire here whether reticence as to incidents of former years can by any possibility render a marriage void. If it were so, certainly the law ought to be the same for man and for

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woman. So high a standard for validity would mean the destruction of many marriages, and, seeing that the facts might not come to light for years, disaster would come upon the heads of innocent children. The theory is plainly impracticable in the ordinary run of marriage.

But it does sometimes happen that the wife has a child within a few months of the marriage of which her husband is not the father. She may have married simply in order to save her reputation. In some parts of the United States the courts have decided that this constitutes such a fraud on the man as does in law render the marriage invalid, assuming that he had no grounds whatsoever for thinking his wife other than what she was supposed to be before he married her, and that he left her at once upon the discovery. Apparently, if the husband was a sailor, and he discovered many years after his marriage and the birth of his own children, that soon after the marriage, and while he was away on his ship, his wife had had a child of whom he never heard, he could have the union annulled. Something of the same sort is the law in several foreign countries, but it is not the law here. The exact point came up for decision in the Divorce Court a few years ago. The husband was a groom. He was only able to see his intended wife at rare intervals during their engagement, and at her request the ceremony took place before the date which had been intended. The reason came out afterwards. She made a confession, and he left her. The child was born, and then he applied for a declaration of nullity. The case was very fully argued, and the judge was invited to say that the

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American decisions must be taken to express English law. But when the whole series of English decisions was looked at, there was hardly anything capable of being twisted into support of the American doctrine.

He decided that the marriage was good.

In this country, when one person marries another of his own free will, they are married for richer for poorer, for better for worse, once and for ever, and no manner of deceit in the inducement will affect the status which is the consequence.



## XVIII

THE MARRIAGE OF MARGARET WILSON



## XVIII

### THE MARRIAGE OF MARGARET WILSON

IT HAS been said that consensual marriages like that of Johanna Gordon are viewed with disfavour by spiritual authority in Scotland and visited with penalties by civil jurisdiction: that they are never resorted to except where there is some disparity in the position of the parties, or some other cogent reason suggesting temporary concealment of the connection. Those who suppose that any form of irregular marriage is considered in Scotland to be as creditable, as becoming, or as satisfactory as a marriage by a minister of the Gospel, do not really know the habits and feelings of the people of Scotland on this subject. Official discouragement, however, does not err on the side of severity, for if the parties like to go before the sheriff and confess to the crime, a small fine is inflicted, and a copy of the conviction is given to them to take to the registrar of marriages. The registrar then enters the marriage in his book, and a further five shillings secures a certificate of it which is good in all courts in the United Kingdom and the Dominions thereunto belonging.

The Scottish lawyers derive comfort from the reflection that if their law does not promote morality, at all events

it preaches circumspection. Laxity of conduct may pave the way to a false assertion of marriage which will be hard to rebut.

Major Steuart had seen service in the Crimea and obtained the Victoria Cross in the Indian Mutiny, but after he went upon half-pay he fell into drinking habits and became generally dissipated, associating with persons much below him in rank. Poor in purse but rich in expectations, he was heir to a baronetcy and one of the finest estates in Scotland with a rent-roll of some thousands a year. Among his undesirable acquaintances in Edinburgh was a man named Wilson, of indifferent sobriety, who had been fined in the police-court for drunken assault. This man had a shop for the sale of fishing tackle and similar gear. One of his daughters kept a refreshment stall at the Theatre Royal, and the others served the gentlemen who came to their father's shop. The major was a regular customer, and he liked to be waited on by Maggie Wilson, who was a handsome girl. He bought over a dozen walking sticks a month from her, gave her dresses and trinkets, and took her out for drives and dinners alone. He was thirty-eight, and she was seventeen.

The Wilsons lived in a street of bad repute and theirs was an ill-regulated household, but eventually the major took up his abode with them as a lodger, and talk sprang up among the neighbours as to his relations with the girl, which may or may not have been well-founded. Her family hoped it would come to a marriage, but the major was not the kind of man to be easily caught, even

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when in liquor, and he had already been seriously entangled with two women without marrying either. Probably he did not contemplate marriage, for his sense of honour had been sapped as much as his sense of decency. When weakened by drink, it has been said, he might be expected to do anything, but when vigorous and sober he was like Hamlet when the wind was north-easterly—he “knew a hawk from a handsaw.”

The story so far is pretty clear, but what happened next is by no means clear, for it rests on statements by persons who were interested as relatives or friends of the girl.

The major stood a supper to celebrate his birthday, and old Wilson resolved to do what he could on that occasion to put things on a better footing. There were plenty of eatables and drinkables, we are told, the house was lighted up, and ale was served with the supper. Those present were the Wilson family, a woman hairdresser who had come in to dress their hair, and the major.

After the children had been sent to bed, Wilson began to look angry ; he had an awful face for giving an angry expression, the hairdresser says, and it was very bad at that time, and she rather thought he frightened the major. He told him he had been too long in his house, and his daughters were not to have their names ruined by his being there. The major felt it hard that this should be said at his birthday party. He sat in his chair crying, the tears coming over his eyes. He was serious and sober. After a minute he brightened up.

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" Wilson," he said, " I will show you what I can do ; I am poor now and cannot marry, but I will marry her in the Scotch fashion." He went down on one knee, took a wedding-ring from his waistcoat pocket, and placed it on the third finger of the girl's left hand, saying, " Maggie, you are my wife before Heaven, so help me, O God ! " The two kissed each other, and Maggie said, " Oh, Major ! " and put her arms round his neck.

Old Wilson proposed the health of the couple in port, and a wee whilie after that there was champagne. The major spoke a good bittie, saying there would be no more squabbling now, and he would get a house, but he asked them to keep secret what they had seen that night until he was in a position to make it public. Mr. Wilson said, " Remember, Meg, you're married, and I have nae mair to do wi' ye." After that the two were escorted to a room in the fashion which was once customary at weddings both in Scotland and in England, and left together. The next day the major impressed on the maid-of-all-work, " Mum's the word ! "—meaning that she was not to make an awfu' blaw about it.

There were a number of remarkable features about this evening performance. How was it the major came to have a wedding-ring in his waistcoat-pocket ? He was a Roman Catholic, and marriage should have meant to him the presence of a priest. If he did intend a marriage, there was no occasion to have a secret one, for his father had told him he could marry the girl if he liked, and perhaps he might settle down if he did. And

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if it was to be kept quiet, how was it going to shut the mouths of the neighbours? It might be reasonably maintained in the light of subsequent events that the burlesque of a marriage never happened in any shape or form, but nearly a dozen Scottish judges, though they boggled at this or that detail, found that in substance it did. The question for us is only what the right interpretation of it ought to be. We are not to ask what the major had in his own mind, but what the rather giddy girl understood him to mean. To say of a man and woman who are living together that they are married in the Scotch fashion is at best an ambiguous phrase, and frequently means, ironically, that they are not married at all. It is on the face of it quite possible that what was offered and accepted was the appearance of marriage but not the reality, and that under the circumstances the Wilsons were glad to get that, hoping it might be replaced in time by matrimony proper. It is said that the Wilsons took care to talk about the marriage afterwards, but it is more than doubtful whether they did; it is quite true that the major called Maggie a married woman when it suited him to do so.

The major was not charged in his bill for her board and lodging, and when he went away two months afterwards to avoid his creditors he did not take her with him. During the two-and-a-half years which elapsed between the supper-party and his death, Maggie only lived with him at broken and irregular intervals, mainly residing with her father. When she was with him he sometimes called her his wife, and after he obtained some money

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by the sale of his commission he took her as his wife to Paris along with her father and sister : occasionally he called her something else. We learn that he continued to make a sad hand of himself, and went about very, very drunk, looking as if he had come down a chimney. Ultimately he died from delirium tremens.

Six months after the alleged marriage Maggie summoned a couple of the neighbours in the police-court for calling her the major's kept-miss. If she did not like the name the right course was to set up the marriage. She did nothing of the sort. She took the proceedings as Margaret Wilson, with the consequence that when she was asked whether she had not been living with the major, she collapsed.

The following year she had a child by him. She gave her maiden name to the registrar of births and entered the child as illegitimate. The comment of one of the Scottish judges upon this incident was : " I have not met with an instance either in the criminal or the civil court of a married woman falsely recording her lawful child as illegitimate."

A number of letters were written to her by the major from time to time, such as never before passed between a husband and his wife. They were all addressed to Miss M. Wilson, beginning " My dear Miss Wilson," and ending " Yours very truly," without one word which would bear the suggestion of a marital or any other relation. Even when old Wilson sent a letter to the major to acquaint him that " our Maggie " had had the child the day before, subscribing himself, " Your humble

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servant," the major replied with an account of the state of the weather for fishing, and the only reference to Maggie was at the end—"With kind regards to all, particularly to my kind nurse, Yours truly, W.D.S." Of the announcement of the birth of a son he took no notice whatever.

During the last year of his life she did not know where to write to him, and applied to his law agent for help for the child, receiving eighteen pounds in all, for which she gave receipts in the name of Margaret Wilson.

Soon after the major's death her father also died. His will contained bequests to "Margaret Wilson, Georgina Wilson, and Mary Wilson, wife of Frederick Wyke." But Maggie presently fell into a state of destitution, and then she wrote to the major's father for pity on his son's child, saying she had letters and other proof that she had been acknowledged as his wife. This was the first and last time she ever made the claim before the great lawsuit. There were, in fact, no such letters, and presently, as Maggie Wilson, she proceeded against the major's executors for an allowance for the child in the ordinary form of a suit in bastardy.

She married a military riding-master, and on that marriage she described herself as a spinster.

It may be presumed that she was at last in possession of the sinews of war. Four years after Major Steuart's death, six years after the supper party, she raised an action in the Court of Session for a declaration that she had been his lawful wife. It was not for the sake of the child, for the child was dead ; but her widow's portion

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now would amount to a considerable sum, and, of course, the slur on her reputation would be wiped out.

It was a famous fight, befitting a case which was of the deepest importance to the jurisprudence of Scotland on the subject of marriage. About fifty witnesses of every rank and standing testified that the major said she was his wife, among them an old comrade whom he told on his death-bed he was a married man. Others said he laughed at the suggestion when his friends made it to him, and said a man must have a companion. All the facts we have narrated were put in evidence, and many more besides which were little credit to Maggie or to the major, until there were no less than three hundred pages in print and more than twenty days of judicial time had been consumed. Then thirteen judges proceeded to cut their way through the difficult tangle of testimony.

Four of them pointed out that the burden of proof was on the applicant, and that they were asked to spell matrimony out of the fragments of an occult family revel, only recalled after a number of years, and the death of one of the parties, in the face of the real evidence deducible from the whole subsequent lives and writings of them both. They protested they were unable to do it.

The other judges thought some things in the case were almost unintelligible, but many of these, including the delay, could be accounted for by the poverty of the applicant, and the folly of affronting a wealthy family when she had no money. They accepted the supper-party as it stood, and declared that Maggie was the major's widow.

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Nine judges pronounced in favour of veritable matrimony. It is a lesson to immoral people to be careful in Scotland !

The case went to the House of Lords after that, and lasted another five days, but ended in a judgment which was unanimous. It was agreed that the account which had been given of the supper was biased, inconsistent, improbable and inaccurate, and of no avail whatever against the body of evidence bearing almost irresistibly against the marriage. Something probably did occur at the supper, but it was a colour of marriage calculated to "stop people's mouths." The decree of the court below was accordingly reversed.

There have been pretended consensual marriages before the courts of Scotland in which the circumstances have been even more repulsive, but none ever came so near success as this one did. Four Lords of Parliament, four Lords of Session, went one way, nine Lords of Session the other : Maggie lost on the poll, but she won on the show of hands.



## **XIX**

**PRINCE LOUIS CLOVIS BONAPARTE**



## XIX

PRINCE LOUIS CLOVIS BONAPARTE

IT IS generally understood that in English law no man may take advantage of his own wrong. I intend to show that in more ways than one, generally, I admit, for good reasons, that maxim does not hold in the case of marriage.

Lord Brougham once remarked that it would be a most perilous thing, and inconsistent with the whole marriage law and its principle, to enable parties by previous contrivance to hold in their hands a power of dissolving their marriage, or by subsequent declaration to free themselves from the fetters of their matrimonial contract. With the greatest respect to a great Lord Chancellor, that is one of the possibilities which actually exists in our marriage law to-day, though not to the same extent as before Lord Hardwicke's Act was altered.

That Act provided that any marriage solemnized by licence between parties of whom one was under twenty-one, without the consent of the father or other guardian being first obtained, was null and void. The consequences of this well-meant provision were monstrous. Those who obtained licences on false statements of their own age or that of the persons with whom they were

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about to intermarry, whether from error, design, or carelessness, were allowed, whenever they liked, to prove the minority of one of the parties at the time of the marriage, and the absence of the previous consent required by the statute. They were then entitled as a matter of course to a declaration that the marriage was void from the beginning. They could claim the benefit of their fraud, or their folly, whichever it might be, and discard their wives at their pleasure. Investigation of the records of the London Consistory Court shows that there were forty such cases in twelve years. That was only one of the courts in Doctors' Commons, and as there were similar courts all over the country, the evil must have been considerable. We read, for example, of a woman who assured the bridegroom she was of age, and it was in reliance on her statement that he swore his affidavit. They had been married for eighteen years, and had had six children, and then she repudiated her marriage, and bastardized her children. Another of these void unions had lasted for twenty-five years, another for twenty-seven, and one actually for thirty-five.

All these people were allowed to take advantage of their own wrong, not because judges entertained any other feeling for them than contempt, but because matrimonial courts are concerned with the status of persons, and not their personal merits.

The same reason must still be allowed to operate when it is proved that a marriage has been contracted within the prohibited degrees, or with a married person, even though the applicant who supplies the necessary evidence

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in order to rid himself of a tie which has grown irksome to him is confessing to his own disgraceful conduct. A judge has no option in the matter.

One of the most odious instances of this kind of case is Prince Louis Clovis Bonaparte's nullity suit. He was a grand-nephew of the great Napoleon, being the son of Prince Lucien Bonaparte, the distinguished philologist. Prince Lucien died at his residence in Norfolk Terrace, Bayswater, in 1891, living just long enough to witness the moral downfall of his son. In point of fact, Clovis was his natural son, but he was legitimated in accordance with the laws of France.

In May, 1888, at the parish church of St. Thomas, Douglas, Isle of Man, Clovis married a lady described in the register as a spinster. His surname at this time was plain Clovis, and the lady will be referred to here as Mrs. Clovis. Mrs. Clovis, young as she was, had some experience already of the Divorce Court. She possessed unusual personal attractions, particularly for the opposite sex, and it was unfair to call her a spinster. Her first marriage had taken place at the end of 1884, and within a year of that date her husband applied to the court for relief by reason of her alleged misconduct with another man. That petition was dropped upon certain terms, one of them being the settlement of some money on the lady. Almost the next day another petition was filed, the co-respondent this time being Clovis. But again it all came to nothing, for when the wife brought the case on after it had been hanging fire for a considerable period, her husband failed to appear, and it was dismissed. Just

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before that happened, Clovis had been communicating with a professional gentleman in Scotland with a view of securing a divorce in that country, as all the parties concerned were anxious in their several ways to avoid the publicity of having it here. A very pretty little arrangement was come to, and that is the reason why the English proceedings were allowed to fall through. The injured husband was complaisant and ready to do what he was told. In July of 1887 an office was taken for him in West Nile Street, Glasgow, and his name put up there as a tea merchant. He went to Glasgow and had a look at his premises. He took a return ticket, but he slept in Glasgow a whole night. The expenses of this remarkable trip were not paid out of his pocket, nor the rent of the office where he was supposed to be dealing in tea. Incidentally, he knew nothing about tea.

The object of his journey was to establish a domicile in Scotland. It seems that Clovis had been advised that all that was necessary in order to engineer a divorce in Scotland was that the petitioner, or, in the Scottish tongue, the pursuer, should have been resident in that kingdom for forty days. It was wrong. There had been a time when the Court of Session acted on that doctrine, but the practice had been altered, one of the reasons being that it was unwise to offer to persons living south of the border facilities to come and be divorced in Scotland when they disliked their own courts. Those who desire to dissolve their unions must sue in the country in which they permanently reside. But this husband was not willing to stay even the forty days.

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He went a second time to Glasgow in September and stayed one more night—expenses four pounds thirteen shillings, not paid by him.

When the necessary papers were lodged in the Scottish Courts, it was alleged in them that his wife had gone away with a gentleman named Joseph Richards, and was living with him at Sauchiehall Street, Glasgow. They were really living there then, but Joseph was the name Clovis had taken when he was confirmed, and Richards was the name of his mother. In fact, the gentleman was Clovis. Once again the injured husband journeyed to Scotland, this time to Edinburgh, to give his evidence. He swore that there was no concert or collusion between him and the defender, “ all which is truth, as the deponent shall answer to God.” The result was a decree of divorce, based on the fiction of his domicile in Scotland. Apparently he married somebody else after a time, while Clovis and the lady departed happily together, and in due course went through the solemnities of marriage in the Isle of Man.

“ Forth came the priest with stole about his neck,  
And bid her be like Sara and Rebeck,  
In wisdome and truth of marriage.”

The union lasted a little more than three years, during which time they lived more or less satisfactorily together; but it rested on an unsecure foundation, and at the end of that period the volatile Frenchman had made the acquaintance of another lady whom he thought he would like to marry, and was as anxious as King Harry to find a plausible justification for fresh matrimony. The opinion

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of counsel was taken upon the marriage with Mrs. Clovis, and he advised against its validity. Mrs. Clovis was told about this, but not about the other lady. She was also told that unpleasant statements were being made about her and Clovis, and he might be landed in prison over the Scottish business. She was given to understand that the correct thing to do was to get a decree of nullity, which would be a mere matter of form, and then he could marry her again in a way which none could dispute—at least, that appears to be her account of it. What he had in mind she did not guess : he sought to untie the knot, and she to tie it tighter.

Thereupon Clovis left her, ostensibly to prepare the way for the nullity suit. Money was needed to clear off creditors and so forth, and particularly, according to her statement, to stifle the threatened exposure and prosecution.

For this purpose she handed over her jewels. If diamonds could make a woman happy, she would have thought herself happy, for there were a diamond tiara, necklace and family relics which she believed were worth twenty thousand pounds. But almost the whole had come from Clovis, and events showed that the diamonds were mainly the best kind of paste. She was packed off to the country. Three days afterwards, her spouse assumed the style and title of Prince Louis Clovis Bonaparte by deed poll, and proceeded forthwith to matrimony with the new divinity. The haste strikes one as indecent, for in name at all events he and Mrs. Clovis were still husband and wife, and it is customary to be off with the

### PRINCE LOUIS CLOVIS BONAPARTE

old love before being on with the new. Mrs. Clovis read the announcement of the wedding in the newspapers, and was disillusioned.

She took proceedings forthwith for dissolution of marriage on the ground that her Prince had committed bigamy. It was plucky of her, but she in her turn seems to have been wrongly advised on a point which is quite elementary.

Bigamy by itself is not a ground for divorce : it must be bigamy with adultery. Of course, for practical purposes the one offence includes the other, but technically it does not. It was open to the Prince to apply for a stay of the proceedings, and this he did, an order being made that her petition must be amended, or taken off the file. Then he launched his own suit for nullity against her.

She made another attempt to assert herself by charging him in the police court with obtaining her jewellery from her by false pretences.

The other lady was now wearing some of it, but the whole was taken possession of by the police, and the Prince was committed for trial to the Central Criminal Court.

The Old Bailey occasionally entertains important guests, but the appearance of a Prince in the dock is somewhat rare, and his friends and the public crowded there to look at him. It would have been a sensational duel between husband and wife if it had come off, but at the last moment they were disappointed, for Mrs. Clovis was advised to drop the proceedings upon an undertaking to return the articles, and pay the costs.

## MARRIAGE A LA MODE

She had played her last card, and the game was lost. It was useless for her to fight the nullity suit. The grounds for it were that the Scottish decree was invalid for want of jurisdiction, and that by the law of Scotland a wife divorced for adultery is not permitted to marry the man with whom the adultery was committed. It was a disgraceful story for any man to tell, and particularly so for a Prince. It may be that he had to some extent been the victim of others, as a person in his position is exposed to dangers to which more humble people are not usually subject, but it is impossible to say for him more than that. The court was urged to hold that as he came there with unclean hands, and set up a fraud against a lady who was the innocent party to it, he ought not to be listened to.

But the precedents, of which there are a great number in the Law Reports, were all the other way, and the case had to go on. The fraud and collusion were established beyond all question, and the Prince succeeded in his sorry suit. Whether Mrs. Clovis was so ignorant of the doings in Scotland as she tried to make out may be fairly doubted, but she came through her ordeal a great deal better than he did, and the judge must have regretted the decision which the law compelled him to give. In truth, however, she brought her fate upon herself, and not a single one of the persons concerned in this chapter of recent history is really worthy of any sympathy. The tortuous road in matters matrimonial leads to unhappiness.

**XX**

**MAY AND DECEMBER**







(Facing page 241)

*Duchess of Somerset (Lady Elizabeth Percy)*

*(See Chapter XX)*

## XX

### MAY AND DECEMBER

IN DAYS that are gone it was never too soon to marry. The age of effective consent in this country has always remained (except under the Commonwealth) as the Romans fixed it, fourteen for boys, twelve for girls. Many think now that is far too young, although they may consider that eighteen, which is the age for young men who wish to marry in Holland, Hungary, Luxembourg, Russia, or twenty-one in Sweden, subject to dispensation by the State, is too old.\* Records in England, however, disclose practices which remind one of the child marriages which are still prevalent in India. The motive underlying them was sometimes the money which the lord could make out of the marriage of his infant tenant, sometimes the desire to lay field to field.

Dr. Furnivall has won the distinction of discovering the

\* The form in the Marriage Register Book contains a column relating to Age, so that none shall be married who are below the age of consent. Parties who are being married are invariably urged to state what their exact age is, but this, while pleasing to Somerset House and sometimes perhaps to the curious, is not required by law. It is sufficient to state that the parties are of full age, when that is the case.

The Census of 1921 contained two husbands and ninety-eight wives aged fifteen, but none under that age. The husband of one of these wives was 78.

very worst cases. He dug into books of the sixteenth century in the Chester Diocesan Registry, and discovered no less than twenty-seven instances in which persons, not of the nobility but of the middle classes, came to the court to have the marriages annulled which they had entered into as children, and if we bear in mind that most of those so married must perforce have put up with their unhappy lot, the chronicle leaves one aghast. The strangest of them is the marriage of John Summerford to Jane Breton in 1564. John's uncle carried him to church "holding him in his arms all the while the words of matrimony were in speaking," for John was three and Jane was two. Little wonder that most of the words had to be said for the poor little mites ! Elizabeth Hulse's deposition touching her wedding describes what happened then. It was 1561. She and George Hulse, who was seven, "were married together in the chapel of Knotisford, what tyme she knowes not, bie reason hit was done when she was but 3 or 4 yeaeres old ; and beyng asked howe she knowithe they were married in Knotisford, she sais she knowis not, but bie the sayenge of his father and mother. Further, she sais she was married to him because her frendes thought she shuld have had a lyvinge bie hym."

The legal effect of these unions appears to have been that when the parties arrived at fourteen and twelve respectively they might live together as husband and wife without any further ceremony : on the other hand, if they had the pluck and were in a position to do so, they could repudiate the tie.

This sort of thing was still common even in the eighteenth century : John, Lord Decies, was eight and Kathleen Fitzgerald twelve, when the Archbishop of Canterbury solemnized their union in 1673. The professional view of the matter was that the lady had no option but to go on with it, as she was of an age to consent, but his lordship could refuse when he arrived at the mature age of fourteen. Nevertheless, in the face of the orders issued against her by the Court of Arches, she married Edward Villiers within a couple of years. The lawyers published a pamphlet upbraiding her wilfulness, but they had the decency apparently to leave it there.\*

Far worse was the fate of Sir George Downing and Mary Forester. Their parents and friends constrained them to marry when George was fifteen and Mary two years younger. George was sent abroad for the Grand Tour, and came back in four years time. He declined to have anything to do with his lawful wife, and she was equally determined to dispense with him. They promoted a Bill in the House of Lords to dissolve the union, which by that time had existed in name for fifteen years, declaring "that such Disgusts and Aversions have arisen and continue between the said Sir George and the Petitioner that there is no possibility of any mutual agreement between them" ; but the knot of their loveless marriage had been tied indissolubly, as they were both of the age demanded by law.

\* NOTE.—There is an entry in the Vicar-General's books in 1675 of a licence which was issued for the marriage of William Whitmore, of "Balmes, Middlesex," gentleman, bachelor, about ten years of age, to Mistress Frances Whitmore, of Bridgnorth, Salop, spinster, about nine.

They pleaded that they had done as they were bid to do, and said just as the parents and the priest commanded them to say ; the Lords were obliged to take a view which is thus expressed by one who did not agree with it : "A boy and girl, of the years aforesaid, repeating a certain form of words after a certain person in a church between the hours of eight and twelve, and had thereby made a contract which must stand like fate, and be irrevocable as the hours that passed a week ago by any power on earth." Downing College, Cambridge, may be regarded as the result, for, had Sir George been permitted to marry again, he would in all probability have had descendants to provide for, instead of founding that institution !

One of the most remarkable series of marriages in girlhood is that in which Lady Elizabeth Percy, heiress of the great Northumberland family, was the victim. In 1679, at the age of twelve, she was married to Henry Cavendish, Earl of Ogle and heir to the Dukedom of Newcastle. He was himself only fifteen, and "the saddest creature" to look upon. He was sent abroad to travel and did not live to return. Next she was married to Thomas Thynne, of Longleat, a notorious profligate. She ran away from him on the very day of the wedding, whereupon he instituted proceedings in Doctors' Commons to possess himself of her property. He was murdered by one of her rejected suitors, and then, at fifteen, she became Duchess of Somerset, marrying a man so much prouder than any Percy that he mulcted his own daughter of twenty thousand pounds for daring to sit down in his presence.

One of Pepys' letters, describing a great piece of wickedness in 1695, indicates plainly the indifference of Society to these infantile unions.

"One thing comes in my way as a Governor to hear of, which carries a little mirth with it, and indeed is very odd. Two wealthy citizens are lately dead, and left their estates, one to a Blue Coat boy, and the other to a Blue Coat girl in Christ's Hospital. The extraordinariness of which has led some of the magistrates to carry it on to a match, which is ended in a public wedding ; he in his habit of blue satin, led by two of the girls, and she in blue with an apron green and petticoat yellow, all of sarsnet, led by two of the boys of the house, through Cheapside to Guildhall Chapel, where they were married by the Dean of St. Paul's, she given by the Lord Mayor. The wedding-dinner, it seems, was kept in the Hospital Hall, but the great day will be to-morrow, St. Mathew's ; when so much I am sure of, my Lord Mayor will be there, and myself also have had a ticket of invitation thither, and if I can will be there too : Bow bells are just now ringing, but whether for this I cannot presently tell."

Parental compulsion is a thing of the past now, for the present generation would resent it, and marriages between boy and girl are comparatively rare. The age at which people marry had been raised by modern custom, and not many girls are wedded under seventeen. I can only recall one or two cases in my own experience where they have been fifteen, and none younger than that. It will be readily understood that when the parties

marry young to-day, there is generally a good reason for it.

We no longer sacrifice our children, but we still sometimes sacrifice ourselves in what is called a *mariage de convenance*. The very phrase smacks of the eighteenth century, but some of our plain-speaking forefathers had another name for it. Cattle are bought and sold in Smithfield, and matrimony between adults for the sake of an establishment was called a "Smithfield marriage." In these days of camouflage people would probably die of shame if they were treated in the way which was usual in 1731 : "Married, the Rev. Mr. Roger Waina, of York, about 26 years of age, to a Lincolnshire lady upwards of 80, with whom he is to have £8,000 in money, £300 per annum, and a coach and four during life only;"— "The Rev. Athanasius Huring, aged 82, to Miss Carr, aged 22, an agreeable young lady with a fortune of £1,500." An ambitious Pressman let himself go over one of these cases of disparity in 1784, as follows :—"At St. Bees, Cumberland, Mr. Jeremiah Rule, aged 19, to Miss Hannah Hodgson, widow, aged 61, being the fourth time she has honoured the marriage register book with her name. In the evening several of the relations by her former husbands went to the apartments of the new-married couple to pay their respects to their young grandfather; a great number of the neighbours also attended on the occasion to congratulate him on the prudent choice he had made, loudly applauding that philosophic disposition which would prefer the ripened charms of threescore, which cannot

possibly suffer by change, to the blooming beauties of youth, which are known to be as fading as any flowers in the wild field of nature."

These people were actuated by the love of money to prostitute the name of marriage. "The marriage of a young woman with a young man is of God's making, as Adam and Eve ; of an old woman and a young man, by the Author of Evil." Cornelius White must be counted among the lucky ones, for the poor thing he was coupled with did not live long. He was about 14 and Ellen Dale was 70 at the time of the marriage, though according to one account she was 80. Cornelius obtained the consent of his parents, and Ellen, who was incapable of walking by reason of a complication of diseases, was carried to the church in a chair. During the subsequent revelry she "called for her crutches, commanded her husband to dance, and shuffled herself as well as she could, the day being spent with the ringing of the bell and other demonstrations of joy, and the populace being soundly drenched with showers of excellent liquor plentifully poured upon them." They were married in January, 1753, and she died within the month. Things might have turned out very differently. Daniel McCarthy, of County Kerry, had died the year previous at the age of 111. "At 84 he married a fifth wife, aged 14, and had by her 20 children, one every year ; he was always very healthy, was never observed to spit, no cold affected him, he could not bear the warmth of a shirt at night, but put it under his pillow : for 70 years past, when in company, he drank plentifully of rum and brandy, which

#### MARRIAGE A LA MODE

he called ‘naked truth,’ and if in complaisance he drank claret or punch, he always drank an equal glass of rum or brandy, which he called a ‘wedge.’”

America naturally breaks the record. John Weeks, a pensioner of the Civil War, was 106 when he married his tenth wife, and she was 16. He was only 114 when he died, and what killed him was three pounds of pork, a like quantity of bread, and a pint of wine.

In our own times a healthy prejudice has developed against these unequal marriages, a prejudice which has sometimes extended to cases in which much might be said in favour of the match. A well-known instance is the marriage of the Baroness Burdett-Coutts to Mr. Ashmead Bartlett, of which Queen Victoria disapproved so strongly that she refused to see the lady.

There is a third class of nuptials occasionally met with, not always admirable, though there are exceptions, and sometimes there may be even a touch of romance connected with them. In Russia persons who have reached the age of eighty are forbidden to marry, and in Yugo-Slavia no woman over fifty and no man over sixty can enter into matrimony. Our annals furnish many instances of marriage long after these ages. The Greenwich parish register contains this entry : “1685, Nov. 18. John Cooper of this parish, almsman in Queen Elizabeth’s College, aged 108 years, and Margaret Thomas, of Charlton, Kent, aged 80 years, married by licence of the Lord Bishop of Rochester, and leave of the Governors of the Drapers.” And a note follows : “Ould Cooper buried October 31, 1686.” In June, 1778, at St.

Bridget's Chester, George Harding, aged 107, was married to Catherine Woodward, aged 83. It was his fifth marriage, his last wife having died when he was 104. None of these, however, come anywhere near the performance of Dame Scrimshaw, who

“ Lived in the reign of Queen Anne,  
And was debonair, buxom and thrifty,  
She married five times,  
As you see by these rhymes,  
And died at a hundred and fifty.”

Marriages at these ages could not be entered into with the expectation of offspring, but that this was not necessarily the case when the lady was young will appear from the instance of Daniel McCarthy given above.

The general experience of mankind has shown that marriages are most likely to be happy when the husband is a little, but not very much, older than the wife.

“ Let still the woman take  
An elder than herself : So wears she to him,  
So sways she level in her husband’s heart.”

Some say that the extent of the difference should vary according to the age at marriage, and that a man ought to choose a wife whose age is half his own *plus* seven years ; so that the ideal partner for a man of twenty-four would be a girl of nineteen summers, for a man of thirty-six a woman of twenty-five. I should be sorry for the man who let any such consideration weigh with him : he would be a philosopher, and good philosophers frequently prove poor husbands. He can remain a bachelor

## MARRIAGE A LA MODE

without the privilege costing him anything in ordinary times.\*

\* The Act of William III providing for "certain rates and duties upon Marriages, Births and Burials, and upon Bachelors and Widowers, for the term of five years, for carrying on the war against France with vigour," prescribes the following assessments :—

		£	s.	d.
Bachelors above 25 years old, yearly	...	...	1	0
Widowers , , , ,	...	...	1	0
A Duke, being bachelor or widower, yearly	...	12	10	0
A Marquess, , , , ,	...	10	0	0

**XXI**

**BANNS OF MARRIAGE**



## XXI

### BANNS OF MARRIAGE

"ELIZABETH APOLLONIA GRAY, falsely called Mansel," petitioned the London Consistory Court for a declaration of nullity on the ground that she was described in the banns as Eliza Gray. Lord Stowell observed that such high-sounding appellations deserved publicity, but he had convinced himself she was not known among her friends by all of them, and certainly not as Apollonia. Doubtless, said the judge, that name had been bestowed upon her, in accordance with the custom of the Roman Catholic Church, as that of the patron saint to whose care the child was dedicated at its baptism. The saint, if he could recollect the legend rightly, presided over the human teeth, her own having been plucked out of her mouth as part of her sentence of martyrdom. On the whole he was of the opinion that Elizabeth's identity was sufficiently disclosed, and her application must fail.

Even in the days when everyone was more or less compelled to attend the parish church on Sunday, it was a commonplace that the reading of banns of marriage, if there were a number of them, or the clergyman had a cold, hardly effected their purpose, but they are prescribed in order that the congregation may know who

the parties are, to give parents and guardians the opportunity of intervening, and to elicit any information as to the applicants which ought to be given. Someone may know, for example, that one of the parties is already married, and yet the other party be wholly unaware of the fact. The names therefore should fully disclose the identity of the applicants. If they have a number of names, the right course is to give them all, for one of them may be familiar to some, another to others. I remember a lady once applying to me for a licence who rejoiced in seventeen names, and she had great difficulty in remembering them all, but the whole seventeen were duly inserted in the licence.

Under the old law every marriage by banns which was not preceded by "due publication" was null and void, and whenever the names published did not satisfy the court it amounted to undue publication. If the name omitted, whether Christian name or surname, was not in fact one by which the person was known, the marriage was valid. If it was an identifying name, the marriage was void. There might be a good explanation of the error, but the court was not concerned to enquire into that : it was fatal if the omission led to a probability of fraud. There was a silly woman named Ney who put up the banns in the name of Wright. She was led to do it, we are told, from a mere idle and romantic frolic. If one may conjecture the reason, possibly she had heard that the man who marries "Miss Wright" is sure to be happy. But it turned out a sorry jest for her and for her children, for years afterwards her husband seized on it

#### BANNS OF MARRIAGE

to obtain a decree of nullity, and so got rid of her and her children. Her case is eclipsed by that of Mary Hodgkinson, who was the innocent victim of her own ignorance. She was the daughter of Job and Martha Hodgkinson, and all the village of course knew her as Martha Hodgkinson. But when she was baptized the clergyman had blundered in making out the certificate, and she was set down there not as Hodgkinson but as White. The mistake had never been corrected, and when she was going to be married she thought she must abide by what the certificate said. So she gave her name as White. Presumably no one was really misled, but the law could take no more account of that than how she came to do it. Due publication involved sufficient identification, there was a probability that people might not identify her, and the result was a nullity decree.

Nearly always when false names were given it was a secret marriage.

Peter Pougett was a schoolboy of fifteen living in Marylebone. His father had a maid in his employ, by name Letitia Tomkins. Letitia wrote love letters to Master Peter, and they ended by putting up the banns at St. Andrew's, Holborn. They were not likely to be known there, but they took the fatal precaution of giving Peter's name as William and leaving out Peter. His full name was William Peter, but no one had called him William since his baptism, and, in short, that name was practically obliterated. His father succeeded in setting the marriage aside.

Augustus Henry Edward Stanhope, son of the Earl

#### MARRIAGE A LA MODE

of Harrington, was nineteen when he married his Jane. She was dressed as a servant and he as a groom. They made a similar error by omitting the name Augustus, because that was the name by which he was known.

In these cases under the old law the only point the court had to consider was, aye or no, was there due publication ; with the further question, whether the parties were aware of the error, it was not really concerned to enquire. It must have frequently happened that one of them knew nothing about it, and then the legal consequence was obviously extremely harsh. This state of things came to an end when the present Act was passed, providing that unless both the parties acted knowingly and wilfully in the matter the marriage was to stand. This has enabled the judges to hold, for example, that a marriage which was solemnized a day after the banns ran out (banns remain effective for three months from the third publication), the irregularity being unintentional, was a good marriage. On the other hand, it has deprived them of a means of setting aside fraudulent unions.

Amelia Elwood was a married woman, but she told her lover she was a spinster and her name was Emma, and the banns were published accordingly. Her husband died while the publication was taking place, so she did not commit bigamy ; the marriage was held to be good on the ground that the man was the victim of her fraud and acted in good faith. A pleasant thing for the man !

A girl of fifteen afflicted with St. Vitus' dance from infancy, and strong neither in health nor in mind, was told



(Facing page 256)

*Prerogative Will Office, Doctors' Commons*

(See Chapter XXVI)

(From a print in the Author's possession)

at St. Olave, Southwark—"both of this parish"—three days later his father got hold of him, and he never saw her again. She was the illegitimate child of Sarah Tooth by a man named Barrow, who had subsequently married her mother. Very naturally, she went by the name of Barrow, but in the banns she had given the name of Tooth, explaining to Charles that if anyone noticed that two people named Tooth were marrying, it would tend to conceal his identity. It will be observed that Tooth really had been her name to begin with, but her right name was the name she was known by.

The trick has been sometimes played of supplying a name for the banns closely resembling the right one, and then throwing the blame on the church clerk and signing the marriage register correctly. When Miss Wormald married her father's butler, the clergyman read the names over in the vestry first. In the banns her name was Morumild, and when she exclaimed that it was wrong he should have known the ceremony ought not to proceed.

A youth named Meddowcroft did the same thing, and called himself Widdowcroft. He signed his proper name in the register, and as he said there must have been a blunder, the banns book was actually corrected to correspond. Afterwards the clerk found the note of the name which had been made when it was first handed in, and the so-called blunder became a fraud.

The Act stipulates that the parties must have acted knowingly and wilfully, but it is uncertain what precise meaning attaches to the word "wilfully." Some time

#### BANNS OF MARRIAGE

ago, an Irish peer, the then Lord Dunboyne, was charged at the Old Bailey with wilfully making a false statement for insertion in a marriage register that the lady was a widow and he was a widower, whereas actually they were husband and wife indulging in the luxury of a second wedding more fashionable than their first. Lord Campbell told the jury that if it was done mistakenly he was not guilty. There was, however, a case the other day relating to a war wedding which was solemnized after the banns had only been read once, the parties accepting the clergyman's assurance that it was legal at that time. They were deemed to have acted wilfully.

Just before that there was another case in which there could be no question as to the wilfulness, but the result was almost ludicrous. One Smallwood married May Taylor, and they both gave his name for the banns as Small, which was the name he temporarily went under, having deserted from one regiment in the army, and joined another. Two years later she married a second man, and was charged with bigamy, to which she pleaded guilty, and was sentenced accordingly. Small thereupon obtained a decree *nisi* for the dissolution of his marriage with her by reason of her bigamy. Then the King's Proctor came on the scene and successfully took the point that his marriage was null and void. Small became a bachelor again, and May Taylor an honest married woman who had been wrongfully convicted.

It is sometimes a real difficulty to determine what name ought to be given. The correct name is the name by which a person is known, and if the baptismal name

has been superseded by another (as may readily occur when a name has been adopted for professional purposes), the latter is the correct name.

But when is the first name superseded? A woman divorced her husband, and then married him again. Two years elapsed between the divorce and the re-marriage, and during that interval she went by her maiden name, but she re-married in the name she had acquired by the first marriage. Presently she was back once more in the court, and the judge told her that if she tried to annul the re-marriage on this point she would find it hard to convince him that her married name had been in two years completely obliterated. Clearly there may be an honest doubt as to the right name to give, and it cannot be wilfulness if the parties make mistake and give the wrong one. Nevertheless, while the law remains unaltered the safe but cumbrous course is to publish both the alternative names in the banns, and so eliminate all possibility of trouble.

False names affect the validity of marriage by banns only, and not marriage by licence, or any marriage in a register office. An odd Chancery suit a few years back made this quite clear. A widow had by her husband's will been put on terms not to marry again; if she did she was to lose her interest in his estate. She did marry, and she said nothing about it. It was a register office marriage, and the notice to the registrar was in her maiden name and gave a false address. When the transaction leaked out, the court was asked to declare there was a forfeiture. She contended she was not legally married

## BANNS OF MARRIAGE

at all, but the decision went against her on the ground that due notice did not mean the same thing as due publication, and lack of it might mean being prosecuted for perjury, but did not destroy the marriage.

In banns cases the father has the right to take the necessary proceedings himself, and his intervention has frequently put an end to an ill-considered union. But one cannot help thinking that sometimes he ought to have left the young people alone. George Henry Wells, a lad of eighteen, made the acquaintance of a girl of loose character. They fell in love, and she abandoned her previous course of life. He married her in the name of Henry Wells. When the father learned what had happened, the son refused to obey him and left his home. For three years the couple lived simply and happily in the City Road. Then there was a "tiff." George Henry reconciled himself with his family, and his father immediately presented a petition for nullity. After the petition had been filed, the young man wrote a letter to his wife which was produced at the hearing. In it he professed his continual devotion, acknowledged he had treated her badly, and assured her he "would put her name before the world pure and undefiled."

The case came before a jury, but they were told all they had to do was to say whether the wife knew the name had been suppressed. If they believed what the husband had stated in the box, then the case for nullity was made out. The result was that, whether the son wanted a decree or not, his father obtained it for him.

There is no limit of time during which these petitions

## MARRIAGE A LA MODE

may be brought, except that it must be during the life of both the parties to the marriage. Should there be children, the consequence to them is bastardy. One can imagine what the life of a woman may become who has married in this way, when her husband holds over her the perpetual threat of turning her and her family into the street. Perhaps it is fantastic to suggest that it is possible for two persons to marry by banns in a false name of set purpose, and so to contract legally a marriage at will.

Over half a century ago, a Royal Commission\* urged that this particular provision of the law relating to banns required reconsideration, and perhaps some day it may get it.

\* The Report issued in 1868 by the Commissioners on Laws of Marriage contains the following remarks :—

“ We now come to the important and difficult subject of the preliminary requirements which the State should accept as securities against improvident, clandestine and unlawful marriages.

“ Whatever these requirements ought to be, we think that no marriage, otherwise lawful, which has been actually solemnised in the presence of an authorised minister of religion or civil officer, should be annulled or declared void on the ground that any of such requirements have not been duly observed. Of all the conditions of lawful solemnisation now prescribed by law, none are more likely to be of practical value for the prevention of clandestinity than those which relate to residence, to the consent of the parents or guardians of minors, and to the declarations required from parties about to be married. Yet if a minor is married in a parish or district where neither party has resided, without the necessary consent of parents or guardians, and upon a licence obtained by means of an affidavit in all respects false, the marriage is good, though the parties are liable to punishment. Assuming this to be sound legislation, it can hardly be right to annul a marriage actually solemnised by an authorised celebrant for want of due publication of banns or licence ; inasmuch as these requisites so treated as indispensable, derive almost all the value which they possess from those which are treated as not indispensable.

## BANNS OF MARRIAGE

Upon the balance of conflicting considerations, we think it better to regard all these preliminaries as directory, and none of them as essential to the validity of marriage ; relying mainly upon the sense of duty and responsibility of the authorised ministers of religion and civil officers, who are charged with the obligation of seeing that these preliminary requirements are fulfilled ; and, in a secondary degree, upon the penalties to which these ministers of religion and public officers, and the parties themselves, may justly be exposed for any wilful breach or neglect of such requirements."

An attempt had been made to get rid of the effect of false names by the short-lived Act of 1822. Under that Act the parties were required to make affidavits before a justice of the peace before their banns were put up, stating therein their names, abodes and length of residence, and whether they were or were not minors ; these particulars were affixed on the principal door of the church and also in some conspicuous place within it, remaining so affixed until the expiration of the three Sundays. False swearing in the affidavits constituted wilful and corrupt perjury, but the marriage was good to all intents and purposes, " notwithstanding false names, or a false name, assumed by both or either of the said parties in the publication of such banns, or at the time of the solemnisation of such marriage."



**XXII**

**MARRIAGE IRREGULARITIES**



## XXII

### MARRIAGE IRREGULARITIES

THE IMPORTANCE which is attached to marriage in this country is indicated by the number of rules which hedge it about. A marriage performed in defiance of some of them is absolutely void, and these are, or ought to be, well-known to everybody. Others are merely directory, or their effect upon the validity of a marriage depends upon the circumstances of it. With regard to this latter group of rules considerable confusion of thought exists which is by no means confined to the laity. The clergy, although they solemnise matrimony daily, do not always know the law they administer, and though one seldom hears of prosecutions for misconduct in the performance of their duties, that is not to say that they never transgress. It would be possible to recall recent happenings, but two glaring cases in the middle of the last century will indicate the lengths to which it is possible for a clergyman to go without fully realising what he does.

There were reasons of urgency for the immediate marriage of two young people. They obtained a certificate from a registrar authorising the performance of the ceremony in a particular Roman Catholic Chapel, the man being of that religion. His priest intervened, and,

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insisting that the woman must become a Roman Catholic, offered to marry them privately at St. Thomas' Chapel, Fulham, which was not the place named in the certificate. After she had been re-baptised he solemnised the marriage there without any fresh certificate, and of course in the absence of the registrar. Minor details are that it took place in the vestry, with the door locked, and one witness only. The woman accepted his assurance that the certificate she already had was sufficient authority. For this felony he was indicted at the Old Bailey, when he pleaded that he was ignorant of the law. Obviously, his intention had been excellent, and justice was content to bind him over not to do such things in future.

The other case was of a graver character. The curate of the parish of Bampton had once been headmaster of the City of London School. He took a double first at Oxford at the age of nineteen, and he published no less than a hundred and twenty books. Yet this man with such a splendid record performed the marriage of one of his maid-servants with the local shoemaker's apprentice at 6.15 one morning without banns or licence, forging the name of a witness who was not present, and inserting a false date. The couple left the village the next day, and the shoemaker, furious at losing the services of his apprentice just when he was becoming valuable to him in the last year of his time, roused the authorities to action. The clergyman made matters worse after that by sending the young people off to Australia in order that they might not give evidence against him. The marriage was one of those which it is desirable to bring

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about, and the groom, who required considerable persuasion, had not put in an appearance at the church on the date originally fixed, when the witness was actually present. The extraordinary procedure adopted seems, so far as one can guess, to have sprung from a desire to save the cost of a real licence to the parties. But the whole thing was unintelligible, and as neither the parson nor anyone else could explain it, he had to go to prison for twelve months.

The commonest irregularity of all is concerned with residence. A portmanteau is placed in the parish, or a room rented, and not occupied. Sometimes the clergyman is aware of the device which is being employed, and because he is convinced that no objection can be offered to the marriage itself he makes no comment : sometimes, perhaps because his time is genuinely taken up with his other duties in a large town parish, he makes no enquiry.

It may be that so many banns have to be read that proper investigation means a great deal of work : on one occasion no less than two hundred and two sets were published in the cathedral in Manchester. It is, however, imperative that he should inform himself on the matter, and if the residence is colourable only, both he and the person who makes the false statement break the law and expose themselves to punishment. The irregularity will not vitiate the marriage, but it may well be a cloak for something else which does.

The infant who poses as being of age can be prosecuted if he obtains a licence to marry in church, makes a declaration to that effect in a register office, or puts it in

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a marriage register anywhere. The marriage itself is not affected, but the offending party may forfeit all property accruing to him from it. Generally he has a father or guardian who would disapprove of the steps he proposes to take. Of course, his trouble may be that though he has a father alive he does not know where to find him. In that case he ought not to have any difficulty in getting married, for a clergyman is permitted to publish banns, and should do so in a proper case, without getting the actual consent of the father, provided there is no expression of dissent. A couple of years ago a story went the round of the newspapers of two girls whose marriages were delayed upwards of three months while they were advertising for fathers. That was because they resorted to a register office : they ought to have gone to a clergyman.

Questions arise with regard to the publication of banns. Sometimes the parties are not so particular as they should be in describing what is technically called their "condition," and a widow, for example, says that she is a spinster. It is customary for such information to appear in the banns, and omission would excite comment, but neither the rubric nor any other law makes it necessary to give it, and therefore an error of that kind relates to a detail which is immaterial and cannot by itself afford a ground for nullity. Of course it is proper to make an accurate entry in the marriage register after the ceremony. If, however, a mistake has been made in the names in the banns the result may be serious. It has been pointed out already that if they do not constitute sufficient

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identification, and both parties knowingly and wilfully proceed with the marriage, its validity may be attacked. The same remark must also apply when the banns are not read the requisite number of times, or if one of the readings does not take place at a service within the meaning of the Marriage Act, or even if they are read by a man who is not properly qualified. Theoretically there might even be a question when the publication is made at the wrong place in the service, but as no one is quite certain what the right place is, it would seem to be difficult to bring knowledge of this irregularity home to both parties married.

Banns must be published on three Sundays, not necessarily consecutive, in the respective parishes of the parties to be married, remaining effective for three months only, and less than that period if publication is completed in one parish before the other. In one case completion was on 1st July and the marriage on 1st October, and in another, which is before the courts now, completion appears to have been in or about March and the marriage took place in June : in such cases the marriage has not been preceded by due publication, and unless a licence has been obtained dispensing with it, it is null and void on proof of guilty knowledge in both parties.

But the knowledge must be acquired before the ceremony, not when the parties are in the vestry after it is over.

Marriage must take place with open doors, within legal hours, and with two witnesses. These things are all directed by the statute : the duty of seeing they are

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carried out is entrusted to the minister or civil official as the case may be, and he may be held answerable if they are not. If the doors were closed, then the challenge to the congregation to show cause against the marriage—the fourth publication, as it has been termed—would be an empty form. Some have thought it sufficient to leave the vestry door ajar, but an unworthy device of that character would not satisfy any court.

The ceremony formerly was before noon, because “those who intend honourably and honestly need not fly the light, and the parties are more serious in the morning.” Three o’clock is quite late enough now, and if the hours were extended, as was once recommended by a Royal Commission, the difficulty of hindering improper marriages would be much increased.

There was a marriage last year outside the legal hours. The minister failed to attend, another, who happened to be in the vicinity, took his place, and it was not far short of four o’clock when the ceremony began. Whatever criticism might justly be made of this transaction, there ought never to have been any doubt raised as to the binding nature of it, for it was valid at common law and not hit by any statute. The ecclesiastical authorities concerned thought it better that the parties should be married again. One trembles to think what would have happened to the well-meaning clergyman once on a time ; the penalty prescribed by the statute of George IV was transportation for the space of fourteen years according to the laws in force for transportation of felons. If the clock strikes before the marriage is complete, suspension

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*ipso facto* and the modern substitute for Botany Bay are staring the minister in the face. According to the rector in *Silas Marner*, who asked the bridegroom, "Wilt thou have this man to thy wedded wife?" proceeding by "the rule of contrary, like," it is registration which makes the marriage. Happily that is an error, and the marriage is complete long before arrival at the word "amazement." It has been judicially laid down that "the essential part of the service is the reciprocal taking each other for wedded wife and wedded husband till parted by death, and, having joined hands, being declared married persons." If the minister can reach that point before the hour, he is within the law.

Even a marriage in the presence of one witness only would be valid, but it would be a gross proceeding. There was a curious case some years ago in which not only was there only one witness, but the marriage was in the vestry, thus reproducing some of the features of the Roman Catholic case we have referred to. The court pronounced in favour of the marriage, it appearing that the vestry had been consecrated as well as the church.

If a marriage is performed in a place which is not a registered building for marriages or in pretended pursuance of a licence when no licence has issued, the validity of it depends wholly on the question whether both the parties proceeded knowingly and wilfully with the matter. Sixteen years back the ancient parish church of Goulceby, in Lincolnshire, was replaced by a modern one, but the necessary steps to authorise the celebration of marriages there were not taken. Many marriages were performed,

no doubt in all good faith, and accordingly they would be safe from attack, but in order to remove every scruple an Act has just been passed to declare that the omission does not affect them. A remarkable illustration of marriage without a licence is furnished by Dormer's case. The parties were living in different dioceses, and the bridegroom obtained a licence from a surrogate of his own diocese for a marriage at Swinnerton, Miss Dormer's parish church. A surrogate can only act within the diocese for which he is appointed, and has no jurisdiction outside it, and so the licence was useless as it stood. It should have been taken back to him to be adapted for use in the bridegroom's church at Halston, but as the relatives of one or other of the parties might intervene at any moment, a clergyman was found who agreed to marry them at Halston as if the licence had been amended. Under these circumstances it could not be said that there was a licence at all, and presently Miss Dormer endeavoured to induce Dr. Lushington to hold there was no marriage either. He declined to do it unless she could convince him she was aware, like her husband, of the illegality of the proceedings.

The last question we shall touch upon is the unfortunate position of persons who have been married by an impostor. A man of the name of Ellis was convicted in 1887 and sentenced to seven years penal servitude for this offence. Originally usher in a Roman Catholic school at Salford, he possessed himself of spurious letters of orders, acted as curate at Feltham and other places, and was rector of Wetheringsett, in Suffolk, at the time

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of his conviction. He was responsible for a great number of marriages, and naturally it never occurred to the parties to demand his credentials. They presumed he had the legal capacity to perform the service.

There never really was the least question that a marriage by the ministration of a man ostensibly in holy orders and not suspected to be otherwise was valid. In 1820 there was a bogus curate at St. Martin's-in-the-Fields, and the Government of the day did not consider it necessary to take any steps to declare the validity of the marriages performed by him. This view was fortified afterwards by the declaration in the Marriage Act of George IV that wilful knowledge in the parties should make marriages by a sham priest void. Even if the old common law demanded the presence of a genuine priest, which is more than doubtful, it would have been strong enough to recognise marriages performed by one who was honestly believed to satisfy that description. In recent years, however, it has been thought advisable to formally confirm the unions which have taken place under such circumstances, and so Ellis has been immortalised by an Act of Parliament : "Whereas doubts have been entertained as to the validity of the marriages so solemnised, and it is expedient to remove those doubts, all marriages solemnised before this Act by the said George William Frederick Ellis between persons believing him to have been duly ordained shall be as valid as if the same had been solemnised by a duly ordained clergyman of the Church of England."

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This chapter may aptly close with a quotation which summarises the chief points referred to. "There may be a valid English marriage celebrated in a barn by a sham clergyman after publication of banns in false names ; devoid in fact of every security for order or publicity which the law has so anxiously devised. For the marriage is void only if both parties knowingly and wilfully go through it in defiance of the provisions of the law ; and hence if one of them, whether the man or the woman, is led to suppose that a place is a duly licensed church or chapel, that the apparent clergyman is really in orders, and that the banns have been correctly published, the marriage is indissoluble, though in every or any of these particulars deception has existed "

## **XXIII**

### **FOREIGN MARRIAGES IN ENGLAND**



## XXIII

### FOREIGN MARRIAGES IN ENGLAND

NO PART of the law is in a more unsatisfactory state than that relating to the marriages of English people with foreigners. It is not enough in these marriages merely to follow the ordinary procedure. The foreigner has his own law to fall back upon, and if that has not been attended to, it may be open to him afterwards to get the contract set aside abroad. In that event he goes free altogether so long as he keeps out of England. The other party is still his wife by the law of England, and the result may be tragic.

A few examples will show better than anything else the dangers latent in marriages with aliens, and the urgent necessity for legislation to prevent the recurrence of similar cases. An Act of 1906 did in fact attempt to provide Orders in Council in the case of those foreign countries with which satisfactory arrangements could be made, but not a single such order has yet been issued, so that to all intents and purposes the Act is a dead letter.

Valérie Sinonin was a young actress at the *Théâtre Français*, in Paris, who had been brought up discreetly by her mother. A young compatriot, Léon Malac by name, proposed marriage to her. Now Léon was twenty-nine and Valérie was twenty-two, and the laws of France

required every man to ask his parents, or failing them his grandparents, for their consent, and if he was under thirty he must do this three times at monthly intervals, but after thirty he need only do it once. Unless this was done the marriage would be voidable if proceedings were taken within a certain time afterwards. Indeed, so much attention is paid in France to the parental wishes that once, when a great literary man wished to marry an actress, and his mother said, "Not during my life will I consent to your marrying that woman," he waited years and years till his mother died, and when he married the lady she was fifty and he was sixty-five. Léon felt that in his case it was useless to approach his father, so he suggested a marriage in England ; after that his father would have to consent, and they could re-marry in France. They crossed the Channel, married by licence the next day at St. Martin-in-the-Fields, and returned to France immediately. It was presumably part of the original scheme that they should forthwith live together, but this the excellent young woman steadily declined to do until her marriage was an accomplished fact in France ; so she went back to her mother while he proceeded to the banks of the Garonne to obtain the parental blessing. Three months passed, and then, alas ! he wrote her a letter : "I will not marry you according to the French law. I will not seek false excuses to justify myself. I have broken my word. Love. Respect. Léon Malac." Even in French this epistle must have seemed singular and abrupt. Valérie promptly appealed to the French courts for a decree of nullity. After she had

obtained the decree she resumed her profession, and Léon began to make himself objectionable. He went to the theatre whenever she appeared, and hurled immortelles and daggers on to the stage. Such eccentric behaviour would in England have been injurious to himself, and might have induced an enquiry into his mental condition ; but in France a different view was taken, and, as the persecution continued, her prospects with the managers were in time ruined. At last she gave up the boards and fled to London. Her mother and sister came with her, and they set up as repairers of ancient manuscripts. The business prospered, and presently it was time to find out what her legal position was in England. She asked for a declaration that her marriage was as much at an end in England as it was in France.

Now a marriage in this country does not become invalid merely because a licence was improperly obtained for it. We have also admitted ever since the days of Gretna Green that people may go to another country in order to evade the formalities of their own laws. The question for the court was, whether it was only a formality which had been evaded in this particular case, or whether it was an essential ; and it was held a formality, because the marriage would have been valid abroad if sufficient time had elapsed before anything had been done to upset it. The marriage was therefore good in England, and here she was still the Frenchman's wife.

It was a hard blow for Valérie, and she must have been furious when the judges added that they were relieved by the consideration that if their judgment was wrong

it could be corrected by the highest tribunal in this country. The mender of ancient manuscripts had no money to throw away on the House of Lords : whether she went back to France we do not know, but if she remained in this country where her business was she was doomed to remain a celibate to the day of her death.

Let us leave poor Valérie and turn to the history of an Englishwoman. The name does not matter, as it was only a short time ago ; but the marriage took place in Lancashire and the man was another Frenchman, and it happens that his name was also Léon. They gave their ages as twenty-five and twenty-two respectively. Afterwards, when his father came over and took him back to France, it turned out that Léon was only nineteen. The French courts proceeded to annul the marriage, but as by that time there was a child, the custody of it was awarded to the mother, and Léon was ordered to pay for its support.

He married again, this time a French lady in France ; whereupon his English wife took proceedings for a divorce from him. Sir Francis Jeune held, however, that as the husband was domiciled in France, the English courts had no jurisdiction. This left her in precisely the same position as Valérie. She took the bull by the horns and married an Englishman. They lived together for about two years and a child was born : then differences arose, and the second husband applied for a declaration that his marriage with her was void because she was the wife of Léon. He declared, but she denied it, that she had never told him the whole of the facts in relation to

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Léon. She had described herself as a widow in the marriage register, and that she certainly was not, although one can appreciate it was difficult for her to say anything else. Strictly speaking, if she was not a married woman, she was a spinster. But the sole point the court had to determine was whether the marriage with Léon was void in England. She fought her case up to the Court of Appeal, but there was nothing to distinguish it from that of Valérie. She was not Léon's wife in his country and she had no rights there : she was not the other man's wife in this country and she had no rights here ; in fact, however innocent, she had committed bigamy.

It was agreed that the case was one of intolerable hardship. She must remain single all her life, although Léon had married again. As the wife of a domiciled Frenchman we had refused her any relief. The position was so absurd that the judges declared that the next time the question arose necessity would compel them to find a remedy. A woman must be entitled to be released in this country from the bonds of the foreign marriage when her husband had married again, and the theory that an English married woman's domicile is that of her foreign husband must be relaxed when the courts of the foreign country declined to recognize her as a wife.

Accidents may occur in any marriage, but this kind can be largely prevented by applying to the Consul-General for the country concerned. Continental nations have a system of registration superior to ours, and he can find out whether the foreigner is already married, publish notices abroad when necessary, require any

consents demanded by his law, and generally advise how to proceed. When he is satisfied he will issue a certificate that the marriage will be valid abroad. This course should be inflexibly followed, and though it may mean three weeks delay, it may also mean salvation.

Take a reported Greek case. A lady married a Greek at the St. Giles' register office in 1904. "The husband took her to Athens, treated her very badly, sent her back to this country in 1907—in fact, deserted her for two years and upwards, and in 1911 married in Athens a Greek lady and lived with her in Athens. It turns out that before he married the second time he went before the proper Greek court in Athens, and procured a decree of nullity of marriage against the lady on the ground that by the law of Greece a Greek priest ought to have been present at the ceremony." What a shame if nobody told her about this before : it would have been so easy to get married correctly ! Fortunately the man re-married, and we were able, thanks to the new doctrine to which reference has been made above, to give her a divorce. The British chaplain in Athens has just written home about another English girl who had been victimised in precisely the same way. She married a Greek sailor here in 1920, and he has turned her adrift in Greece and married another person. She can, at any rate, come back here and divorce him. In practice it would seem that the men always do marry again, otherwise the position of an Englishwoman in such circumstances would be hopeless.

There are some difficulties about foreign marriages which one cannot get over at all. It will come as a shock

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to some of us to learn that in this country we do not belong to the Christian religion—at least, that was the view held in Austria before the war. A Jew there attempted to get out of his marriage because his wife was a member of the Church of England, but he failed because in Austria non-Christians may marry non-Christians : had he been a Roman Catholic he would have had his decree of nullity, because Christians may not marry with non-Christians. The late Austrian Government did not like this provision of their law, and perhaps it will be altered now, but we do not know. All that can be done in this kind of case is to warn the English party that if the marriage is set aside in Austria it will not be got rid of here. And the German law has a provision which it takes a German lawyer to understand. “ If one of the parties to a marriage was mistaken as to such personal attributes of the other spouse as would have enabled him or her with knowledge of the state of affairs and with appreciation of the essential significance of the marriage from contracting the marriage,” it may be declared a nullity. Obviously, if an Englishwoman marries a German here and the marriage is annulled on that ground in Germany, she will remain tied up in this country until it pleases the German to marry again.

No marriage made in England which would have been valid as between two English people has ever been declared invalid here because it was in conflict with a foreign law. The only case in which we should follow a foreign law would be one where both parties were

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really domiciled in the foreign country, and absolutely prohibited by their own law from contracting the marriage, and up to the present time not a single instance of this has occurred, although once there very nearly was one. Two Portuguese first cousins married here, and afterwards an attempt was made to set the marriage aside because the law of Portugal forbids first cousins to marry without a Papal dispensation ; but it transpired that one of them was domiciled here, that is, had elected to make this country a permanent home, and the application was dismissed accordingly. I have myself, however, refused to decree a licence in Doctors' Commons to two foreigners upon grounds of a similar nature.

The sum of the whole matter is this. If Englishman marries Englishwoman they know where they are : but if an English man or woman marries a foreigner here, unless they find out where they are and take such precautions as are open to them, the English party to that marriage may fall between two stools—unmarried abroad, but still married in England.

**XXIV**

**DECEASED WIFE'S SISTER**



## XXIV

### DECEASED WIFE'S SISTER

ONCE ON a time the Prohibited Degrees were more extensive and peculiar than Sam Weller's knowledge of London. There were so many pitfalls about that marriage was a dangerous thing. Nowadays we can learn all we are likely to need from the Table in the Prayer Book in a few minutes, but the practitioner who could master them all in the days when they flourished like the green bay tree—there was a fortune for him in the Church courts of the period. That was before the Reformation, which was the great turning-point in the history of marriage in this country.

Imperial Rome ordained that first cousins should not marry, and the Church added second and third cousins to that. Some of our ancestors must have been rather dull-witted, for this system which appears to us awkward but simple, never came quite pat to the common people. At the beginning of the last century there was still a lingering belief that first cousins were permitted to marry, but second cousins were forbidden, and as late as six years ago a man came to Doctors' Commons to enquire whether he could marry his second cousin.

Baptism carried in its train another set of relations.

Godparent and godchild, godparent and parent of godchild, godchild and godparent's children, godparent and godparent, godchild and godchild, were all god-sib and unable to marry with each other. Some doctors declared that anyone who chanced to touch the robe of the infant at the font came within the same sacred circle.

Husband and wife being one, it followed that the survivor of them could not marry those who were within the forbidden degrees of relationship to the other. This meant that two sets of first, second and third cousins were eliminated, as well as two sets of spiritual relations. Precisely the same consequences resulted from illicit intercourse, and brought in another crowd of affinities. *The Second Mrs. Tanqueray* would have been unintelligible in a Plantagenet theatre.

Attempts were made from time to time to add affinity to affinity, so that a man might not marry those who were of affinity to those who were of affinity to him, but that was a doctrine which never became popular in England. Even without that, things must have been in a pretty matrimonial mess, which it was advisable to stir as gently as possible.

It is probably true that family life in the baronial castle was at the root of a good deal of this. Poor relations formed a large part of the household, and they were thrown so closely together in their rough environment that some such rules were necessitated for the peace of the family, as well as for the safety of the baronial child. In a proper case a dispensation could always be obtained, and so long as it was left at that the system was tolerable for the better

classes. Unfortunately the temptation to make money out of it became too strong for the Church.

Another very powerful reason was the facility afforded for breaking the bonds of wedlock at pleasure. Divorce with freedom to marry again was unknown,\* but a decree of nullity, which came very much to the same thing, was easy for those who could afford the luxury. Legal ingenuity seldom failed to unearth a flaw on one of these grounds in any marriage. In the last resort a couple of false witnesses could be found to make up the deficiency.

Thus, the Earl of Northumberland in the days of King Rufus having been condemned, three months after his marriage, to perpetual imprisonment for rebellion, his grass-widow was empowered by ecclesiastical decree to take another husband. The precise grounds of the decree do not appear, but probably some weird relationship was conveniently discovered which proved that the marriage had been improper. Unfortunately, her second husband, in his turn, discovered that he was himself a blood-relation of the Earl, and she was sent packing again.

Margaret Tudor was not married so much as her brother Henry, but she "had a great twang of his temper," as the old chronicler puts it. Her first husband fell at Flodden Field, and then she married Angus. When she became desirous of a change she alleged that King James had survived the battle, and then, as that

\* There was a solitary exception, of rare occurrence in England. A married non-Christian, upon his conversion, was permitted to re-marry, unless his wife consented to be converted as well.

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story was incredible, she said that Angus, before his marriage to her, had promised marriage to another woman. A “shameless sentence sent from Rome”—the words are Wolsey’s—accepted her proof of this pre-contract and annulled the union, while preserving the legitimacy of her child. Thereupon she married Lord Methven. When she grew tired of him she set up that he was a third cousin to Angus, and, as she had lived with Angus, of course she could not contract valid matrimony with so near a relation.

Janet Beaton, the dread lady of Branksome Tower, was originally wife to Simon Preston of Craigmillar. In order to escape from him she made bold to confess that before her marriage Sir Walter Scott of Buccleuch and herself had forgotten a certain Commandment. Now Sir Walter was some kind of cousin to Simon, so the marriage could not stand. Sir Walter married her himself then, the wife he had (by dispensation, as she was “second and third of affinity, third of consanguinity, and third and fourth of affinity”) conveniently dying or being divorced.

Immense changes were wrought in this department of law by the Reformation. Pre-contracts only ceased for a brief period to be enforceable : they lasted nearly to the reign of George III, and then degenerated into the modern Breach of Promise action: in fact, it was a hard case of pre-contract which led to Lord Hardwicke’s Act. But a clean sweep was made of the whole mediaeval fabric of consanguinity and affinity. Gradually the family was becoming less gregarious. Archbishop Parker drew up the present Table on the lines laid down in the

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eighteenth chapter of Leviticus, comprising only such prohibitions as were necessary to maintain that unrestricted intimacy between relations in the nearest degrees which was indispensable for the peace and happiness of families, and to maintain a strong barrier against abuses of that intimacy. Dispensations were only needed thereafter when people wished to marry at forbidden seasons, or without putting up banns, or at some unusual time or place.

However, in proportion as the bars to matrimony were broken down, the door of escape from it was shut, as most of the old grounds for nullity disappeared. Proposals were made to introduce the modern system of divorce and even to grant it for causes which we still decline to recognise in England, but in the end nothing was done, and those who wished to obtain a dissolution by reason of misconduct were left to get it by way of a special Act of Parliament in each particular case. It has been thought that the rigidity thus imparted to the marriage tie may have had some share in bringing about the laxity of morals which characterised subsequent centuries.

The mode of enforcing the degrees which were still prohibited remained unaltered. A marriage which was solemnised in contravention of them was not thereby invalidated : it was voidable only. Unless it was brought before an ecclesiastical court while both the parties to it were alive, it was as good as any other marriage. But while they both lived it was in jeopardy, and the legitimacy or otherwise of their children hung upon the chance of someone instituting a lawsuit. This was the law even

a hundred years ago—in fact, until a certain marriage of considerable importance attracted the attention of the Legislature. The Duke of Beaufort married his first wife's half-sister and had a son by her. The Chancellor of the day, Lord Lyndhurst, resolved to relieve him from his awkward position by legalising the marriage, and a Bill was introduced in the House of Lords for that purpose which was couched in general terms. The bishops, on the other hand, were dead against marriages in defiance of the laws of affinity, considering that they ought to be regarded as bad from their inception without any possibility of attaining a legal status by lapse of time. The result was the strangest compromise. An Act was passed which Lord Lyndhurst must have been proud of, as it is the only one called by his name. It declared that the position of the children of these marriages ought not to remain in suspense, and proceeded to enact, first, that all marriages up to that date within the prohibited degrees of affinity should no longer be open to any attack on that ground; and, secondly, that all marriages after that date within the prohibited degrees either of consanguinity or of affinity should be absolutely null and void to all intents and purposes.

That was in 1835. It was *not* in 1907 that marriage with a deceased wife's sister was first legalised !

When a thing is right or wrong in the abstract, no compromise can be properly entertained. It seems therefore to follow, from Lord Lyndhurst's Act, that the objection to marriage with a deceased wife's sister, or any other form of marriage within the third degree of

affinity, rests solely upon consideration of the effect of such marriages upon social life. During the discussion which preceded the Act of 1907, it was said that for one case in which marriage with a deceased wife's sister might be desired, there would be thousands in which it would not, and in which the existing very precious relation would be interrupted by considerations of prudence and of the world's opinion. That view has not prevailed either with regard to the deceased wife's sister or the deceased husband's brother, but it indicates the right test to be applied to any further suggestions in the same direction. The law was easier to remember when every relation in the third degree of affinity was affected by it : its symmetry has been destroyed, but the principle underlying it remains. The man who wishes to marry his deceased wife's mother, daughter or niece, his aunt by marriage, or his son's mother-in-law, must first persuade Parliament that such union would do more good than harm to the community.

Perhaps it is advisable to add one word by way of caution—if he is a domiciled Englishman he cannot go to some country where these things are legal and expect his marriage to be recognized here when he returns.



**XXV**

**OUR AMERICAN COUSINS**



## XXV

### OUR AMERICAN COUSINS

A FEW years ago—in 1914, to be precise—a man bearing rightly or wrongly the name of a well-known American family which is held in respect on both sides of the Atlantic, came to Doctors' Commons for a marriage licence, describing himself as a bachelor. The ordinary foreigner finds that special formalities are required of him there by reason of the differences which exist between many foreign systems of law and our own in relation to marriage. The ecclesiastical authorities endeavour so far as they can to eliminate the risk of a marriage being good in one country and bad in another. But this is a danger which does not exist where Americans are concerned, for their law and ours both rest upon the same foundation, and the divergences in regard to contracting marriage are slight. The result is that they are treated exactly on the same footing as British subjects. In this particular case it was rather a pity, for a narrower investigation might have discovered the history of the applicant. However, he was put through the usual catechism, swore an affidavit which seemed to be in order, and obtained his licence. He had not been gone very long when a detective arrived, who had serious business

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with him. He was followed to the church, the marriage was stopped, and he was arrested upon some charge which landed him in gaol.

Four years later an American of similar name consulted a solicitor who was not unconnected with Doctors' Commons with regard to a rumour which was in circulation. He told him that he had been married to a woman whom he had every reason to believe was now dead, for when he last saw her, more than seven years previously, she was suffering from an illness which would undoubtedly be fatal. He was contemplating marrying again, and some woman had maliciously declared his wife had been seen by her recently. The solicitor was not displeased to be acting for so apparently wealthy a client, and after disposing satisfactorily of the rumour, introduced him in Doctors' Commons for the purpose of getting a licence for the proposed marriage. The usual interrogatories there produced a long story, which was calculated to show that the circumstances entitled him to presume the first wife's death. But not only was his name suggestive, his appearance was familiar as well. They are obliged to cultivate memory in those offices. The signature of four years earlier was produced, and he admitted the likeness, but stoutly denied he was the same man. At last he broke down, and was very glad to jump at the suggestion that his application should be withdrawn, in fact he went away hurriedly. For effrontery he would have been hard to beat.

Against this case it is only fair to set that of the bogus baronet, which is a warning to all fair Americans. This

baronet was enjoying himself over on the other side, and made the acquaintance of a young lady of considerable attractions, who, among other things, held a responsible position of a public character. To him her chief attraction was that she had saved money. He married her according to the rites of the Episcopalian Church. He lived on her savings until they were gone, and then returned to England to make his peace with his aristocratic relations, possess himself of his share of the family revenues, and prepare the way for his wife's reception into English society. Several months elapsed while he was doing all this, and although he wrote to her many times, it was only to ask for further cash, and the progress of the family reconciliation was remarkably slow. At last, when he wrote for money to buy a pair of boots, wonderment was aroused, and with the characteristic thoroughness of her race she resolved to come over and ascertain in person how the land really lay. Disillusionment followed. The funds she had remitted had actually been spent on a marriage with another woman. Instead of being a baronet the man was the worst kind of fraud, with a disgraceful record in the British Army and a criminal history.

Obviously the right thing to do was to obtain a divorce, but the difficulty in the way was the expense of it. He had spent all her money, and she had no means of meeting the cost of bringing over from America the Episcopalian clergyman who solemnised the marriage or the other witnesses required by English law. Happily a way opened for surmounting the difficulty. The police decided that the criminal aspect of the matter was of

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sufficient public interest to justify them taking a hand in it, and they brought over for the purposes of a trial at the Central Criminal Court the very witnesses who would be needed for the divorce. After that it was only a matter of arranging a time-table, and Sir Francis Jeune, who was then President of the Divorce Court, upon the position being explained to him, agreed to take the case out of its turn and hear it directly the man had been convicted, while the witnesses were still here. The result was that the bogus baronet was sentenced one day and divorced the next. The other lady in the case, who was herself another victim, in due course made her appearance in Doctors' Commons preparatory to a second, and, one hopes, more satisfactory venture into matrimony.

Though there is a certain tendency in this country towards broadening the grounds which justify a dissolution of marriage, the legislation which has been adopted in some parts of America and the rapid changes of partnership resulting from it do not appeal to the moralist here. As things are, the United States holds the world's record for divorce, and the facilities offered on the other side of the Atlantic give rise to complications on this side. Whether he be a peer or a commoner, the Englishman who obtains marital relief in America and returns with a new wife must consider the laws of England very carefully. Usually he does not return. In any case the position in England of the first wife is one of considerable difficulty. If the American decree is in conflict with our theory of domicile it will not be recognized. It must be a decree granted by the courts of the country of the

husband's domicile, or one which would be accepted by those courts. What we mean by domicile is not residence for a certain period, but a definite intention to regard the particular country as the permanent home. For many years it was assumed that by virtue of certain statutes divorces granted in India to Englishmen in the public service were valid here, but it has now been discovered that they are not, and an Act of Parliament has been necessary to regularize the position of the numerous persons who have contracted fresh alliances upon the faith of divorces in India.

In the same way, if an Englishman obtains a divorce in America, the decree is not recognized here if he retains his domicile of origin, as we understand the term, and if an American woman marries an Englishman over here and then divorces him in America, he remains a married man here if his domicile has not been altered.

A foreign decree must not be contrary to natural justice. This time-honoured expression does not mean that any criticism of the grounds of the decree or of the procedure of the foreign court will be entertained : in this connection it practically means that the respondent must have had a reasonable opportunity of defending the suit. Many years ago proceedings were taken in London against a merchant upon a judgment obtained in Tobago arising out of a commercial transaction. He had never been in Tobago in his life, but the laws there contained a provision that when an action was brought against an absentee from the island, nailing up a copy of the declaration and summons on the court-house door was to be

deemed good service. Lord Ellenborough asked, "Can the island of Tobago pass a law to bind the whole world?" The same principle is applied to American divorces. As a rule the respondent is notified, and it is understood that, at all events in some cases, the expenses of crossing the ocean are offered, but there are cases of what is called substituted service in which, in point of fact, there is no notification at all.

In a singular case which came before our Divorce Court about a year ago, it was held that an American decree was invalid here on the double ground that the necessary domicile was not satisfactorily established, and that the respondent did not become aware of the proceedings until they were over. It was a suit by the wife for restitution of conjugal rights. Restitution suits have often had a comic side in the past, when misconduct alone was not sufficient cause for divorcing a husband, and a decree for restitution was simply a preliminary step towards obtaining full relief, non-compliance with it being statutory desertion. The hypocrisy of the proceedings and the quality of the letters which must perforce pass between husband and wife before the cause was heard, have made the court ridiculous. But these cases were at all events logical to this extent, that the petitioners did in fact seek to obtain the order they asked for, though there might be no ardent desire that it should be complied with. In the particular case we are referring to, however, the object of the proceedings was that the application should be refused. The unexpected happened, and the petitioner obtained the order which she did not want.

The marriage was made in England, and both husband and wife were domiciled in England when it was solemnised. In 1914 the husband left this country, and eventually became resident in the State of Washington. In 1919 he ceased to write to his wife, and she heard no more of him until she learned in 1921 that he had obtained a divorce in Washington and married again. The question then arose, What was she to do? If his domicile remained English, of course the American decree was invalid from our point of view, and she could get a divorce here; but the enquiries she made led her to think he had acquired a domicile in America. She instituted the suit for restitution to find out what the position was, hoping that the court would recognise the American decree and say her marriage was no longer in existence. What did happen was that the court declared she was still a married woman. She obtained a decree which was of no use to her, whereas if she had simply asked for a divorce in the first instance, she would have had it without delay. The one marriage was valid in America, the other marriage was valid here.

Another case has just been heard which seems to be of some importance. A pair of English married people went to the States, and the wife divorced the husband in South Dakota for desertion. The wife married again and remained there. The husband returned to England and asked for an English divorce on the ground of his wife's conduct in taking another husband. The application failed, as the judge thought there had been some arrangement between the husband and his wife; so the

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lady has two husbands now, one by American law and one by the law of England. It is a happy decision, because we might have had cases in which one of the parties to a marriage, while desiring a change of partner, recoiled nevertheless from the degradation which is the necessary basis of divorce in England ; and the notion of an American divorce for desertion, followed by a perfectly respectable American marriage, and an English divorce on the strength of the perfectly respectable American marriage, might have proved attractive.

**XXVI**

**DOCTORS' COMMONS IN RECENT YEARS.**



## XXVI

### DOCTORS' COMMONS IN RECENT YEARS

MY FATHER, who was surrogate in Doctors' Commons before me, shared chambers in Bell Yard with Dr. Robertson, Chancellor of Rochester, the last resident member of the dissolved College of Advocates. The Bell tavern, from which Richard Quiney wrote a letter to Shakespeare, still stood at the end of its yard, and the archway which led from St. Paul's into the Commons, with the room over it in which Sir Christopher Wren prepared his designs for the new Cathedral, had not yet been demolished. The ticket-porters in their tall hats and aprons were just what they were when Mr. Weller visited the precinct, and though there were only two of them left, almost as much a nuisance to the wayfarers on Ludgate Hill as the plyers of the Fleet Parsons had been. Their popular nickname was Trotty Vecks. At an earlier date, according to Lord Eldon, the proctors themselves had stood in their doorways and importuned the public to come in and be done for, but it is hard to believe that men of such carriage and dignity ever stooped so low. However that may have been, the days when "Touch the Commons and down comes the country!" was a shibboleth had long passed away, and what had

been a flourishing community was reduced to the sitting surrogate and the registrars of the courts, with occasional visits from two ecclesiastical judges, sadly shorn of their ancient prerogatives.

The ecclesiastical matters which are still dealt with there are of little general interest. Of the other side of the business, the matrimonial department, one can only speak with reticence. Persons in all ranks of life, from Royalty and Lord Chancellors downwards, turn into the primrose paths which lead to Doctors' Commons, and I do not know where a better collection of autographs is to be found. In such cases, where there is a story to tell, it is not for me to tell it. No one ever knows what passes in Doctors' Commons. A young friend of mine came once for a licence, and when he recovered from the unexpected shock of meeting me there, begged me to say nothing to his father ; the next day the father arrived on a similar errand for himself, and begged me on no account to tell his son.

The great object of the marriage licence is the saving of time. Doctors' Commons has long been the nearest approach to Gretna Green in England. Of course, the marriage cannot take place there, but the period which must elapse between the licence and the ceremony may be limited to the time taken to reach the appropriate church. Dickens, who was closely associated with the institution founded by Henry the Eighth of matrimonial memory, relates in *Great Expectations* how Mr. Wemmick was married.

Mr. Wemmick went out for a stroll with a friend, and

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their feet strayed beyond Camberwell Green. Wemmick said suddenly, " Halloa ! Here's a church !" They paused. " Halloa !" said Wemmick, " here's Miss Skiffins ! Let's have a wedding ! "

In they all went, and there was the clergyman, and Wemmick happened to have the ring in his pocket, and a wedding there was. It seemed bewildering, but the explanation was simple, as Dickens knew well. Wemmick had been into the city that morning to procure the licence.

There are some things a licence will not do. A man came into one of the offices and said, " I want one of your three months' licences." He was told they were all made like that, they were all available for three months. " But what I mean to say is," he persisted, " I want one of those things which only marry you for three months, and you renew it afterwards if you wish to, and if you don't like the lady you don't."

A variant of the same motion, quite common, is that a marriage by licence only holds good for seven years from the date of the licence

Another applicant had reasons for not wishing to marry in his own parish church, and what he desired to be supplied with was " one of those licences which allow you to cross the road and marry in the next parish." He thought he could get a licence for any church he liked, provided he paid for it.\* So he could, but only under

\* It has long been a recognized hardship that those who wish to marry in a particular church cannot properly do so unless a residence is made by one of them in that particular parish. The reason for this rule is the avoidance of clandestinity. There is a proposal now before Convocation

unusual circumstances sufficient to induce the Archbishop specially to intervene, and then it would have cost him a not inconsiderable sum of money. The days have long passed away when a licence was obtainable which gave the parties a free hand, naming their respective parish churches and one other, with a blank space for the insertion of a fourth if desired ; a practice which crept in upon an egregious misinterpretation of the Canon—"the parishes where they dwell, both shall be expressed in the licence, as also the parish named where the marriage shall be celebrated."

A man procured a licence to marry a girl whom we will call Mary. He came back a day or so afterwards. "There is a little mistake in this licence," he said ; "the lady's name ought to be Rose." He was questioned narrowly. It was expected he would say Miss Barkis was unwilling, but it was not quite that. The intention was to marry Mary, but he had never formally proposed to her. He had perhaps heard that a marriage licence is the highest compliment one can pay to any woman, so he went to the house and had tea with her, the fateful document in his pocket. "Then," he confessed, "I saw her sister in the garden." Romance being expensive, he had to take another licence.

A story is told of a similar thing happening in regard

whereby, after publication of banns in the accustomed manner in the respective parish churches, the parties would be able, upon complying with certain simple conditions, to marry elsewhere. The proposal is at present limited to marriage after banns, but it seems feasible to extend it to marriage by licence. See an article by the writer in *The Guardian* 15th August, 1924.

to banns, when the bridegroom, after the second reading, applied to alter the name of the bride. He was told it meant another eighteenpence and beginning again, which considerations were sufficient to induce him to leave things as they were. I do not dare to say he was a Scotchman, but I do remember a Scotchman who wanted back the money his licence had cost because the marriage had not turned out all he anticipated.

There is nothing to stop anyone procuring the licence first and popping the question afterwards, and there have been cases in which the only object in getting it would seem to have been to annoy the lady. Some years ago at Framlingham in Suffolk an unusual incident occurred on the publication of banns for the marriage of Reuben Gedney and Hannah Larter, both of this parish. Hannah was in the church, and stood up pluckily and forbade them. "Why?" asked the scandalized minister. "Because I am Hannah Larter, and Reuben Gedney is an impudent young man who has not so much as bordered with me." "Bordering" in that part of the world means the jesting of a country courtship. Reuben Gedney always maintained afterwards that no self-respecting girl ought to come to church when her banns were being read.

One would have thought it pretty obvious that licences are never issued in blank for the applicant to fill in when he discovers the right person to marry. Some people believe they are, and it was quite a common thing during the war to have letters like the following: "Dear Sir, I am writing to ask you if you would kindly forward a

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marriage licence for a soldier in khaki. Ten shillings postal order enclosed. Yours truly." Another ran : " Dear Sir, I am enclosing the sum of ten shillings for a marrriage licence as I have arranged to get married shortly. I have stated affairs to my Company Officer, and he referred me to the Senior Chaplain of the camp, and I have also stated affairs to him. He has taken particulars and has agreed to help me in any way. He has asked me to get him the licence, so if you would kindly forward the licence to above address and oblige."

During the war the rush for licences was enormous, the cost to non-commissioned ranks was reduced, the Government relinquishing the claim to stamp-duty, and Doctors' Commons was satisfied with ten shillings.

All the world came to interview "Dr. Commons" or "General Vicars,"—the latter being the military designation for the Vicar General's Office. Their marriages were not always well thought out by the parties. Marriage leave was a welcome change from the monotony and horrors of the trenches. In one of the offices alone forty-eight people were turned back in a period of ten weeks for one cause or another, some because they were married already (there was ground for believing nineteen of these particular applicants were not single men), others because they had been successfully persuaded that before they married girls they had only known a couple of days or so they had better be introduced to their parents if they had any. A little gentle discouragement was frequently called for, and delicate work it was, occasionally resulting in threats of personal violence, which happily

never matured. It must be recollected that lonely soldiers came from all quarters of the globe, and among them were some who had hardly ever set eyes upon a woman, and thought them all as good as their own mothers. Marriage has always been easier to get into than to get out of, and when no ground for just refusal was apparent, and persuasion was useless, the licence had to go, although the Divorce Court might be looming in the future.

Bigamists as a rule draw the line at a church marriage, and have the decency to resort to a register office, but the ecclesiastical officials are always on the alert for them. It is believed that only three or four of them got married through Doctors' Commons during the whole war; all the rest were detected. Now and again they came back under other names and were detected a second time.

It is impossible to speak too highly of the way in which the clerks in the several offices carried out this difficult work, which involved much more than a perfunctory examination of army records. There was, however, one distressing case in which everyone concerned was deceived. An officer wished to marry a young lady of good position, and rumour reported that he was a married man. He swore he was not, but the evidence was that there was a woman in existence who had asserted in writing that he was her husband, and had actually named the place where the ceremony between them was performed. Under these circumstances it was impossible to give a licence for him to marry anyone else. But he

returned and produced an affidavit obtained by him from the woman. In it she declared she had been telling untruths, and had never really been married to him. The affidavit was a perfectly genuine one, and on the strength of the statements contained in it the licence was issued and the marriage took place. Then the facts came out. The woman had been induced by some lying story to make the affidavit, and she was his lawful wife. The sequel was a pretty severe sentence of imprisonment on the man.

Another man, who was really married, did not know that he was, and *bona fide* described himself as a bachelor. The fact came out by sheer accident. He was asked jocosely, "What was the name of your first wife?" and he answered, "Gretchen!" After that he was asked what he meant. It appeared that he had married a German woman in Germany, where he carried on business. He was interned there when the war broke out, and his wife went away and left him altogether. A foreign consular official temporarily representing this country solemnly assured him that this constituted a legal dissolution of the marriage. Under these circumstances he thought he need not say anything about it.

The ignorance of many of the war applicants was amusing. Some of them thought there had been special legislation to enable infants to marry at eighteen without their fathers' consent, and a quite common notion among persons of a superior class was that marriage by proxy was allowed.

The first step towards a licence is the filling up of a

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form of particulars. One of the questions relates to nationality, and Domestic Servant, Anglo-British, Presbyterian Scottish, Ayr, and Christian, were a few of the answers to that. Another question as to the length of residence in the parish produced one answer giving the dimensions of the house ; those who imagined it meant the approximate distance they lived from the church replied "five hundred yards," or "one mile," and a sailor who had only just come ashore took yet another view, and wrote "ten minutes." "Condition" is another of the points on which information is desired : it proved a great stumbling-block, and the howlers under that head included Protestant, sprinter, clerkess, and kitchen-help. "Parish where residing" produced the astounding answer, "Box 381, Bloemfontein, S. Africa."

After the form has been completed and the affidavit prepared from it, the applicant has to take the oath : "I know the contents of this affidavit, and I believe the same to be true." It was simply impossible to get this right. It was "the affidy of it," "this epidemic," "the confidence," "the continence," "the contentions," "the act of David," "the ante-dated," "I know the contents and am 'appy of it," "I nobly contend with the 'appy-day-vit," "I know the contents of Alice Davis," (the bride), "I swear and believe the tale is true."

A woman in the divorce court recently told the judge there that she accompanied a man to a register office to make enquiries about their proposed marriage, and she received the impression that they were married on the spot. The judge did well to be incredulous about that,

but something rather similar happened in Doctors' Commons. Both the parties had attended to obtain the licence, and the woman happened to be standing by the side of the man when he made his affidavit. They quarrelled on their way to the church, and he told her it was too late to alter her mind, as the real marriage had taken place. She was very much inclined to believe that it was so, but providentially she came again to make sure.

There was drama in those war marriages. There was the girl who heard about a lonely soldier who never received any letters, and pity led her to write to him, and the sequel to that was a marriage licence ; the sea-captain who was torpedoed and washed ashore, and the tender care given to him by a volunteer nurse brought him back to life and gratitude to his future wife ; the strange case of the blinded Australian soldier who went to draw his pay before he married, and was knocked down in the park by a man who offered to see him home—and when he regained consciousness he had lost his money and recovered his sight.

It may not be inappropriate that before leaving Doctors' Commons we should enter a *caveat*. Some people regard the institution as a public matrimonial enquiry bureau. They are quite entitled to ask whether a man may marry his step-sister, his son's mother-in-law, or his father's mother-in-law who is neither his stepmother's mother nor his grandmother. They could, of course, find out from the Prayer Book, but the Table of Degrees is not so easy as it looks. Also there is a widespread notion

abroad that that Table is only binding on strictly Church people, and in a quaintly worded circular recently issued from a civil register office it was thought necessary to inform the public, that "the prohibited degrees in the office are the same as in the Church of England." But there are, also, those who wish to know whether, being already married, their circumstances enable them to contract other matrimony, how they are to escape from loveless unions, whether an existing marriage is valid in law, and a host of similar queries which are more properly dealt with by their own solicitors. "I wish to divorce my wife, and I understand you will make the necessary arrangements with the King's Proctor." "Dear Sir—Will you please forward me particulars of marriage in a register office, including fee, age, etc., and oblige." "Dear Sir—Can you publish my banns of marriage? I must have a certificate that I have been called three times in church before I can get married. I have enclosed order for five shillings which I hope will cover any expenses."

Doctors' Commons does not exist for such purposes.

This chapter must end with an expression of regret that time, the great innovator, has again laid its hand on the classic precincts. Until the other day those ecclesiastical registries which survived the changes of the nineteenth century were still there. One of them, the Vicar-General's Office, which can show you books discoloured by the Great Fire of 1666, when the registrar was issuing licences while his premises were burning, just as the other day they were being issued while the

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German bombs were falling on the other side of the Cathedral, has now been moved to Westminster. The change, made for the convenience of the public, has justified itself, but a link with the past has been snapped.

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But the scent of the roses will hang round it still ! ”*

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